TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 14

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, ET AL., PETITIONERS,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, ET AL.

No. 15

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, ET AL., PETITIONERS,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

PETITION FOR CERTIORARI FILED FEBRUARY 7, 1948.

CERTIORARI GRANTED MARCH 15, 1948.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 24, 1948.

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[fol. a] **IN SUPREME COURT OF WISCONSIN**

AUGUST TERM, 1946

Nos. 146 & 147

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver, Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD; L. E. GOODING, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board; and Briggs & Stratton Corporation, a corporation, Appellants.

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

v.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbeett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents.

[fol. b] **Appendix**

in

WISCONSIN EMPLOYMENT RELATIONS BOARD

v.

INTERNATIONAL UNION, U. A. W. A., A. F. L., LOCAL 232, et al.

[fol. 101] IN CIRCUIT COURT OF MILWAUKEE COUNTY

DECISION (Omitting formal parts)

In the first of the above entitled actions, which were consolidated for the purpose of hearing, the Wisconsin Employment Relations Board, hereinafter called the Board, seeks to have an order issued by it on May 11, 1946, enforced, while in the second action the International Union, here-

after called the union, or Local 232, seeks a review of the same order under Section 111.07 (8) and Section 227.15.

I have considered all the arguments, contentions and authorities contained in the several briefs and memoranda filed, the last of which was submitted on August 10, 1946, but will confine this opinion only to such facts and authorities as support the conclusion reached.

The last bargaining contract between the employer and Local 232 expired July 1, 1944. At the time of the occurrence of the work stoppages referred to in the record, there was no existing collective bargaining agreement between the employer and the union. Although it was publicly announced that a new contract has been entered into since the submission of these actions to the court, the issue of the legality or illegality of the work stoppages remains for determination by the court.

At a meeting of Local 232 held on November 3, 1945, a new method of exerting economic pressure upon the em- [fol. 102] ployer was discussed by the membership, which authorized "the executive board to call a special meeting during working hours at any time they saw fit" (Exhibit 11).

The calling of such meetings during working hours resulted in work stoppages. No advance notice was given to the employer of such proposed stoppages.

From November 6, 1945, to March 22, 1946, some twenty-seven meetings were called (R. 9-11) (Exhibit 2), resulting in each case in work stoppages of a few hours each. In each case the employes returned to work at the usual time on the following day.

On February 15, 1946, the membership of the union, by a secret ballot, reaffirmed its authorization given the executive board to continue the calling of special meetings at any time. The vote in favor of the continuance of the calling of meetings was 1174, with 7 votes in opposition thereto.

The Board found upon the evidence submitted that there was no contract in existence between the union and the employer, and accordingly the union was not guilty of a contract violation, as charged by the employer (Finding 4), and found that acts of violence against persons declining to take part in work stoppages were not traceable to the union and the union members (Finding 10).

The Board ordered that the union, and the individually [fol. 103] named officers of the union, cease and desist from:

> "(a) Engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike.
>
> (b) Coercing or intimidating employes by threats of violence or other punishment to engage in any activities for the purpose of interfering with production or that will interfere with the legal rights of the employes."

In a memorandum accompanying its order, the Board explained its decision that such work stoppages are a new labor weapon, and cited the following cases as authority for its conclusion that such conduct and activities did not constitute a strike.

The first case cited by the Board in its memorandum is that of *Conn v. N. L. R. B.*, 108 Fedl. (2d) 390. That case involved a refusal of certain employes to work overtime hours. There was no collective bargaining agreement between the employer and employes requiring the employes to work such overtime hours, and because of the refusal of [fol. 104] the employes to work overtime they were dismissed by the employer.

The National Labor Relations Board held that the employer had committed an unfair labor practice by discriminating against the discharged employes because "of their membership in a labor organization and their concerted activities for the purposes of collective bargaining and other mutual aid or protection." On review, the Circuit Court of Appeals found that the refusal of the men to work the daily overtime was not a strike.

The facts in that case are clearly distinguishable from those in the instant situation. Here the employes were not seeking to determine for themselves what their hours of employment were. They were not insisting on the right to work on terms prescribed solely by them, but were insisting on the *right not to work*, in order to induce the employer to arrive at an agreement relating to the terms of their employment.

The second case cited, that of *N. Y. State Labor Relations Board v. Union Club*, 52 N. Y. Sup. (2d) 74, involved the discharge of two employes because of refusal to return to work. In that case the employes would stop at a signal from their steward and would leave their respective stations and go to their locker room, where they stayed for periods ranging from one-half hour to two hours. They, therefore, remained on the premises of the employer. Upon the oc- [fol. 105] casion of the eighth such stoppage, the club manager directed the employes to return to their work, and all but the two obeyed, and these two were discharged.

The State Labor Board held that the discharge of the two employes who refused to work when ordered, after all the other employes who had engaged in the stoppage activities did return and therefore were not dismissed, *was a discriminatory discharge, and therefore had ordered the reinstatement of the employes with back pay.*

The reviewing court pointed out in its decision that:

> "The State Board, by the nature of the relief it afforded, treated the discharges as discriminatory and not as if the two men were striking employes."

The reviewing court, however, held:

> "That the master acted within its rights, in that the two discharged employes (McTeague and Jacobs) were *guilty of acts of insubordination in refusing to obey a direction to return to work.*"

It will be observed that in this case the employes who refused to return to work when ordered to do so remained upon the premises of the employer. In the instant case there was neither a direction to return to work by the employer, nor did the employes remain upon the premises of the employer.

[fol. 106] The decision of the reviewing court in the aforesaid Union Club case was, however, reversed on May 29, 1946, by the N. Y. Court of Appeals, "on the ground that there is evidence sufficient to support the finding of the Labor Relations Board that the employers' dismissal of the employes McTeague and Jacobs was motivated by their concerted union activities." Thus the ultimate holding in the Union Club case is not decisive of the issues herein.

The main issue in this case is whether the new labor weapon of calling meetings of union members during work hours, and the resulting work stoppage to attend such meetings, is a lawful, concerted activity within the provisions of Chapter 111 of the Wisconsin statutes, which, among other things, provides as follows:

> "Section 111.04. Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and *to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection;* such employes shall also have the right to refrain from any and all of such activities."

Section 111.06 (2) (a) provides:

> "2. It shall be an unfair labor practice for an employe individually or in concert with others:
>
> [fol. 107] (a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family."

Section 111.06 (2) (h) provides:

> "(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike."

Thus it will be seen from the foregoing applicable statutes that the employes have a guaranteed legal right to "engage in lawful concerted activities for the purpose of collective bargaining, or other mutual aid or protection." Section 111.06 (2) (h) denominates an unfair labor practice "to take unauthorized possession of property of the employer or *to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.*"

It is admitted that the work stoppage does interfere with production, and the only question is whether the leaving of

the premises of the employer to attend union meetings, [fol. 108] thereby creating a work stoppage, constitutes a strike within the exception of the statute (Sec. 111.06 (2) (h).

> "It is the settled general American rule, effected largely without the intervention of legislation, that workmen who are not bound by contract for a definite period, *and have not been, by agreement, freely made, given such rights, may without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel their employers to accede to demands for better terms and conditions.*" 31 Am. Jur. 928.

The aforesaid rule is supported by a large number of decisions from various jurisdictions, and cited in the notes under such rule.

Counsel for both the Board and the union cite the case of *Walter Oeflein, Inc., v. State*, 177 Wis. 394, in which our supreme court quoted with approval Webster's New International Dictionary, defining the work strike as follows: "An act of quitting when done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer."

The court further stated that:

> "Numerous other definitions of the term 'strike' appear in law dictionaries and decisions, all of which, however, substantially include the elements contained in the definition above set forth."

[fol. 109] Applying the aforesaid approved definition of a strike to the actions of the employes in their so-called work stoppages, we find that each and every element is present. There was (a) an act of quitting (b) which was done by mutual understanding (c) by a body of workmen (d) for the purpose of enforcing compliance with demands made on the employer.

Gauged by the presence of each of the aforesaid enumerated elements, each of the stoppages involve in the instant case was a strike.

The answer to the contention that before each walkout there was no formal demand made on the employer is the admitted fact that at and prior to the first walkout, and at

the time of the subsequent walkouts, the employer and the union were engaged in negotiating a new contract, which negotiations of necessity must have been the result of demands made upon the employer by the union.

In the case of *West Allis Foundry Co. v. State*, 186 Wis. 24, which involved a prosecution for false advertisement for labor without stating in such advertisement that a strike existed, the normal force of employes was about thirty-five, and of such number eight union members and two non-union members ceased working on October 22, 1923, because of notice given on October 8, 1923, to the entire force, of a proposed uniform cut of five cents per hour in their wages. [fol. 110] The court stated that:

> "Under the undisputed facts in this case, the employes withdrawing on October 22d *were lawfully exercising a right, by such concerted withdrawal, to lessen production, delay or impair the employer's work, increase the cost thereof, or cause material interference with his carrying on of contracts he may have had with others, in order to thereby redress their grievance. It is the concerted withdrawal, however, of such employes that makes the strike.*"

The court held that:

> "At the time of the advertisement in February, 1924, the force or economic pressure that had been exerted on the employer by such withdrawals was no longer in existence."

Justice Crownhart, dissenting from the majority decision, held that the strike had not ended on the day that the advertisement appeared, because the usual concommitants of a strike still attached to the situation (p. 39).

If lessened production, delay or impairment of the employer's work, increasing the cost thereof, or causing material interference with his carrying on of contracts which he may have had with others, and which are the direct consequence of a concerted withdrawal by the employes, are declared by our supreme court to be the result of a lawful [fol. 111] exercise of a right in the aforesaid case, then it follows that the concerted withdrawal by the employes in the instant case for a few hours on various days to attend union meetings, and which concerted withdrawal may pro-

duce the same or similar results, except perhaps in a lesser degree, cannot be deemed an unlawful exercise of the same right. It will be noted also that our supreme court in the aforesaid case declared that "it is the concerted withdrawal of employes that makes the strike."

In my research and study of authorities dealing with the subject of strikes, I have found no case, and none has been called to my attention, wherein the courts said that employes withdrawing from employment must refrain from returning to work until their demands are met or until a new agreement embodying all or some of their demands is reached. Nor can the conduct of the withdrawing employes in this case be deemed an interference with the management of the business of the employer, as in the case of controversies relating to the use by an employer of labor saving machinery, or of compelling the employer to continue a department he desires to abandon, or of compelling an employer to divide all work available among all of his employes instead of laying off part of them.

By concerted withdrawal from the place of employment periodically as disclosed by the record, the employes at- [fol. 112] tempted to secure the attainment of a lawful object, to wit, a collective bargaining agreement which would contain an improvement in the terms and conditions of their employment.

> "It is unquestioned that laborers have the right, through concerted action by means of a strike, to attempt to secure the attainment of any of the lawful objects for which they may combine. It is settled that workmen have the right to organize for the purpose of securing improvement in the terms and conditions of labor, and to quit work or to threaten to quit work as a means of compelling or attempting to compel employers to accede to their demands for better terms and conditions. Indeed, the reason for a strike may be based upon any one or more of the multifarious considerations which in good faith may be believed to tend toward the advancement of the employes." (Citing decisions from various jurisdictions.) 31 Am. Jur. 934.

It is contended that under the work stoppage plan involved herein it would be, practically speaking, impossible for the employer to hire any new employes to replace those

who declined to work, since their cessations were always of brief duration and without notice. It will be noted that the employer could hire others, even for a brief period of time, if he were able to do so.

The difficulties in exercising such right must be conceded, but such difficulties perhaps are no greater than in the case of a strike-bound plant where the pickets are exercising [fol. 113] their statutory right of persuading others not to take the place of striking employes. At any rate, the difficulties on the part of the employer in exercising or attempting to exercise his right cannot destroy the rights of employes guaranteed to them by the statute to engage in a strike.

Furthermore, it will be noted in this connection that:

> "It has long been recognized by the law that the relationship existing between an employer and an employe is not necessarily terminated by a strike. By withdrawing temporarily from the service, the employes seek to induce the employer to acquiesce in their demands and to reinstate them in the service under the conditions that they seek to impose. Although they cease to work, the employes intend to retain their positions." 31 Am. Jur. 928, paragraph 191.

In the case of *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 Fed. (2d) 134, at 137, wherein a writ of certiorari was denied, in 302 U. S. 731, 82 L. E. 565, the court quotes approvingly from *Michaelson v. U. S.*, 291 Fed. 940, 942, reversed in 266 U. S. 42, 69 L. E. 162, as follows:

> "'In the case of a controversy over wages and conditions of work in a private and local industry, we agree with counsel for plaintiffs in error that a "strike" does not of itself terminate the relation of employer and employe. A controversy arises, and the employes, then [fol. 114] at work, say to their employer: "We shall stop work until you are in what we may consider a more reasonable state of mind. We shall deprive you of our labor as a legitimate means of exerting economic pressure to induce you to yield. If we do go out, we shall remain at hand, ready to negotiate with you concerning fair wages and working ' ' "rules, and ready to return to work the moment we can agree." *If, by reason of a*

> *failure to agree, the employes stop their work, a "strike" is on. They are no longer working and receiving wages;* but, in the absence of any action other than above indicated looking to a termination of the relationship, they are entitled to rank as "employes," with the adjective "striking" defining their immediate status.' "

If the temporary withdrawals or work stoppages are not strikes, then it is the province of the legislature to so declare by a definition of a strike. It is not within the powers of the court to legislate. Its duty is to determine the controversy by the application of recognized legal principles.

From what has been said heretofore, and upon the authorities hereinbefore cited, I have concluded that the periodic withdrawals of the employes for the purpose of attending union meetings, and which withdrawals resulted in work stoppage, actually constituted a strike, and therefore are not prohibited by the provisions of Section 111.06 (2) (h); that this conclusion is one of law drawn from the undisputed [fol. 115] facts in this case; that paragraph 1 (a) of the Board's cease and desist order is erroneous and must be vacated, and accordingly the Board's petition to enforce same must be and is hereby denied.

By paragraph 1 (b) of the Board's order, the union and its named officers are ordered to cease and desist from:

> "Coercing or intimidating employes by threats of violence or other punishment to engage in any activities for the purpose of interfering with production or that will interfere with the legal rights of the employes."

The aforesaid portion of the order and the corresponding findings in relation thereto are challenged by the union and its named officers as not being supported by the evidence. The court's power and functions in these proceedings are limited by statute and the decisions of our supreme court. In *United Shoe Workers, etc. v. Wisconsin Labor Relations Board,* 227 Wis. 569, at 574-5, the rule has been stated as follows:

> "• • • Certainly the court cannot go beyond the powers conferred upon it by statute. This is not a *certiorari* nor a *mandamus* proceeding, but a proceeding upon a petition for review under the act. The legislature has carefully limited the field within which the court may

proceed: First, by making the findings of the Board conclusive upon the court if supported by evidence; and, [fol. 116] second, by confining it 'to a review of an order.' What is meant by 'review of an order' of an administrative agency is clearly understood in the law. The court must examine the record to discover whether or not the findings of fact are supported by any evidence if the findings are challenged. If the findings of fact are so supported or not challenged, it next inquires whether or not the facts found support the conclusions of the board; and, third, whether the Board acted within the scope of its statutory powers in making the order or within its jurisdiction as it is often said."

In the case of *Retail Clerks Union v. Wisconsin Employment Relations Board*, 242 Wis. 21, at p. 31, the court said.

> "The findings of fact made by the board, if supported by credible and competent evidence, are conclusive. Sec. 111.07 (7), Stats. The extent of the review by the courts is the same as that under the Workmen's Compensation Act, that is, *there must be some evidence tending to support the findings of the Board, and, if this is discovered, the court may not weigh the evidence to ascertain whether it preponderates in favor of the finding. Wisconsin Labor Relations Board v. Fred Rueping L. Co.*, 228 Wis. 473, 493, 494, 279 N. W. 673. The drawing of inferences from the facts is a function of the board and not of the courts. *National Labor Board v. Linkbelt Co.*, 311 U. S. 584, 597, 61 Sup. Ct. 358, 85 L. E. 368; *Wisconsin Labor Relations Board v. Fred Rueping L. Co.*, supra."

[fol. 117] With the aforesaid rules in mind, I have examined the entire record to ascertain if there is some evidence tending to support the findings of the Board and the challenged portion of the order. It is my considered judgment from a study of the record that there is some evidence tending to support the findings of fact and conclusions of law upon which the challenged portion of the order rests. The material testimony tending to support the challenged finding of fact and conclusion of law of the Board is found on the following pages of the record: 54-59, 64-66, 68-69, 72-78, 82-85, 90-95, 98-101, 114-115, 118-119, 133.

The evidence referred to and found on the aforesaid pages of the record, quotation of which would serve no useful purpose, is sufficient to support the finding and conclusion that some of the employes were coerced or intimidated by threats of violence and damage inflicted upon their person, clothing and other property, to engage in the walk-out or stoppage activities, and such intimidation interfered with the legal and statutory rights of the employes to refrain from engaging in such activities, as guaranteed by Sec. 111.04.

It follows that the Board's petition to enforce paragraph 1 (b) of the order must be and is hereby granted, and the union's and its named officers' petition to review and vacate same must be and is hereby denied.

[fol. 118] Under the rule enunciated in *Christoffel v. Wisconsin Employment Relations Board*, 243 Wis. 332, it is solely a function of the Board, and not of the court, to determine what remedy shall be prescribed for the purpose of preventing unfair labor practices. The requirement of posting notices of the provisions of the Board's order, and notification of the Board of the steps taken to comply with the order, has been approved by our supreme court in several cases. *Allen-Bradley Local 1111 v. Wisconsin E. R. Board*, (1941) 237 Wis. 164; *Christoffel* v. *Wisconsin E. R. Board*, (1943), 243 Wis. 332; *Retail Clerks' Union v. Wisconsin E. R. Board*, (1942), 242 Wis. 21; *Public S. E. Union v. Wisconsin E. R. Board*, (1944), 246 Wis. 190.

Counsel for the Board will prepare and present orders in accordance with the aforesaid conclusions.

October 18, 1946.

(S.) John C. Kleczka, Circuit Judge.

Summons (not printed)

IN CIRCUIT COURT OF MILWAUKEE COUNTY

PETITION OF WISCONSIN EMPLOYMENT RELATIONS BOARD
(OMITTING FORMAL PARTS)

Now comes the Wisconsin Employment Relations Board, plaintiff and petitioner in the above entitled matter, by [fol. 119] John E. Martin, Attorney General, Stewart G. Honeck, Deputy Attorney General and Beatrice Lampert,

Assistant Attorney General, and for cause of action alleges and shows to the court:

1. That the Wisconsin Employment Relations Board, hereinafter referred to as the board, is and at all times mentioned herein was an administrative body created by Chapter 57, Laws of 1939, and that L. E. Gooding is the chairman and J. E. Fitzgibbon and Henry C. Rule are commissioners or members of said board.

2. That the respondent, International Union, U. A. W. A., A. F. of L., Local 232, hereinafter referred to as the union, is an unincorporated voluntary labor organization which has its office and usually transacts business in the City of Milwaukee, Milwaukee County, Wisconsin.

3. That the other respondents above named are officers of and constitute the bargaining committee of said union who reside in the City of Milwaukee, Milwaukee County, Wis.

4. That Briggs & Stratton Corporation, hereinafter referred to as the employer, is a Delaware corporation, authorized to engage in business in the State of Wisconsin, having its principal place of business in said state in the City of Milwaukee, Milwaukee County, Wisconsin, and that said corporation engages the services of employees for hire in the State of Wisconsin.

[fol. 120] 5. That on or about the 25th day of February, 1946, the employer filed a complaint with the board charging the above named respondents with having engaged in unfair labor practices within the meaning of sec. 111.06, Wisconsin Statutes, as more fully appears by the record of the proceedings of the board filed herein in the circuit court for Milwaukee County.

6. That after due notice and hearing upon said complaint the board did, on the 11th day of May, 1946, make and file its decision, findings of fact, conclusions of law and order with reference to said charges of unfair labor practices, a true and correct copy of which is hereto attached, marked Exhibit A and made a part hereof.

7. That copies of the said decision, findings of fact, conclusions of law and order of the board, Exhibit A, were duly served upon the respondents above named and upon the

employer; that said order, since its issuance, has been in full force and effect; that the above named respondents and each of them have not, within the time required in said order notified the board in writing what steps they have taken to comply with the same. That the board is informed and believes that the said respondents and each of them have failed and neglected to take any steps to comply with the terms of said order and alleges that said respondents and none of them have complied with either the cease and desist provisions of said order nor the affirma-
[fol. 121] tive action requirements and provisions thereof.

8. That the said board has caused to be certified and filed in this court its record in the proceedings entitled "Briggs & Stratton Corporation, a Corporation, Complainant, v. International Union, U. A. W. A., A. F. L., Local 232, Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents, Case III, No. 1173 Cw-64, Decision No. 953" including all documents and papers on file in the matter, the pleadings and testimony upon which the order therein was entered, and the findings and order of the board, to which record reference is hereby made and the same is incorporated herein as if specifically set forth.

Wherefore the board prays that the court enter a judgment and decree confirming and enforcing all of the provisions of the order herein referred to (Exhibit A) and for such other relief as the facts and circumstances may warrant.

Dated at Madison, Wisconsin, this 8th day of June, 1946.

[fol. 122] EXHIBIT A (ATTACHED TO PETITION OF WISCONSIN EMPLOYMENT RELATIONS BD.)

Findings of Fact, Conclusions of Law, Order and Memorandum Decision of the Wisconsin Employment Relations Board (Omitting formal parts)

The above entitled matter having come on for hearing; the Board having heard the testimony and arguments of counsel; and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. That the complainant is a Delaware Corporation authorized to engage in business in the State of Wisconsin, having its principal place of business in the State of Wisconsin at 2711 North 13th Street, in the city and county of Milwaukee. That it operates two manufacturing plants in said city and county, at which plants it employs approximately 2,000 production and maintenance employes in the manufacture of various products.

2. That the respondent, International Union, UAWA-AFL, Local No. 232, is an unincorporated voluntary labor organization having its office at 2709 North 12th Street in [fol. 123] the city of Milwaukee, Wisconsin, and has been designated by the production and maintenance employes of the complainant at their Milwaukee factories as the exclusive bargaining agent for such employes for the purpose of representing them in negotiations with the complainant with respect to rates of pay, conditions of employment and hours of employment.

3. That Walter Berger, John H. Corbett, Anthony Doria, Oliver Dostaler, Clarence Ehrman, Erwin Fleischer, Herbert Jacobsen, Louis W. Lass and Clifford L. Matchey, are officers of and constitute the Bargaining Committee of said respondent union, and, with the exception of Anthony Doria and Clifford Matchey, are all employes of the complainant.

4. That for several years the complainant and respondent union have entered into various collective bargaining agreements, the last written agreement between the parties expiring by its terms, on the first day of July, 1944. Although the parties continued, since the expiration of such agreement, to follow the terms and conditions generally contained in such collective bargaining agreement, no binding contract now exists nor has existed since said first day of July, 1944 between the complainant and the union.

5. That on the 6th day of November, 1945, the complain-[fol. 124] ant's plants were both*ing* operating on two shifts. At one plant the shift hours were from 8:00 A. M. to 5:00 P. M. for the first shift, and from 3:30 P. M. to 12:00 midnight for the second shift, and at the other plant, from 7:00 A. M. to 3:30 P. M. for the first shift and from 3:30 P. M. to 12:00 o'clock midnight for the second shift.

6. That on said day at about 1:30 in the afternoon practically all of the production and maintenance employes then employed at the two plants of the complainant left their employment at the request and instigation of the respondent union and of the individual respondents, officers and members of the Bargaining Committee of such union, for the stated purpose of attending a union meeting. That on said day none of the night shift reported for work. That on the following day all employes reported for work at the regular hour.

7. Between the 6th day of November 1945 and the 22nd day of March, 1946, on 27 different occasions, at the request and instigation of the respondent union and the individual respondents above named, the production and maintenance employes of the complainant, left their employment during working hours and without the consent of the complainant, to attend union meetings.

8. That all of such work stoppages were engaged in for the purpose of interfering with the production of the com- [fol. 125] plainant and by such interference to induce and compel the complainant to accede to the demands of the union to be included in the collective bargaining agreement being negotiated between the parties.

9. That the respondent union and the individual respondents have publicly stated that it is their intent and purpose to continue to engage in work stoppages similar to the stoppages engaged in on November 6, 1945 and twenty-six times since then, up to an including the 22nd day of March, 1946, for the purpose of inducing and coercing the complainant into compliance with their demands; and have threatened employes that failure to engage in such work stoppages and to attend the union meetings following such stoppage when directed by the respondent union and its officers, will result in punishment to employes of the complainant.

10. That several employes of the complainant who failed and refused to take part in such work stoppages had their locker boxes damaged, clothing cut, ripped and otherwise damaged, tools and other property concealed or injured, and were subjected to assaults and threats of violence. That such acts were committed in the main on the property of the complainant company, by persons unidentified.

11. That the employes within the collective bargaining [fol. 126] unit represented by the respondent union and employed by the complainant, never conducted a vote of any kind at which the union was directed to call a strike and that no strike has been called by the respondent union nor by the employes of the Briggs & Stratton Corporation against the company at any time.

Upon the basis of the foregoing Findings of Fact, the Board makes the following:

Conclusions of Law

1. That the respondent, International Union, U. A. W. A., A. F. L., Local 232, and Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen and Louis Lass are guilty of unfair labor practices by:

(a) Engaging in a concerted effort to interfere with production in a manner other than by leaving the premises in an orderly manner for the purpose of going on strike.

(b) Coercing and intimidating employes by threatening punishment if they fail to engage in such unlawful efforts to interfere with production.

[fol. 127] Upon the bases of the above and foregoing Findings of Fact, and Conclusions of Law, the Board, pursuant to Section 111.07 (4) of the Wisconsin Statutes, makes the following

Order

It Is Ordered that the respondent union, International Union, U. A. W. A.-A. F. L. and Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen and Louis Lass shall:

1. Immediately and at all times hereafter while this order is in effect, cease and desist from:

(a) Engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving

the premises in an orderly manner for the purpose of going on strike.

(b) Coercing or intimidating employes by threats of violence or other punishment to engage in any activities for the purpose of interfering with production or that will inter- [fol. 128] fere with the legal rights of the employes.

2. Take the following affirmative action:

(a) The respondent union and individual respondents shall immediately notify in writing by posting notices in conspicuous places at their respective headquarters or offices in the City of Milwaukee and at any union meeting halls maintained by them, and keep such notices posted for a period of at least thirty days from the date of posting that the respondents will cease and desist in the manner aforesaid.

(b) The respondent union and individual respondents jointly shall cause to be delivered to the Wisconsin Employment Relations Board for posting on the bulletin boards of the Briggs & Stratton Corporation six (6) copies of the notices referred to in paragraph (a) above.

(c) The respondent union and individual respondents shall cause the Wisconsin Employment Relations Board to be notified in writing within five (5) days from the date of receipt of copy of this order what steps the respondent [fol. 129] union and individual respondents have taken to comply with this order.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of May, 1946. Wisconsin Employment Relations Board, by (S.) L. E. Gooding, Chairman; J. E. Fitzgibbon, Commissioner. (Seal.)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complainant, above named, operates two manufacturing plants in the City of Milwaukee. At each plant it employs approximately 1,000 production and maintenance employes. These employes now are and since 1937 have been represented by the respondent union. Since that time various written collective bargaining agreements have been entered into between the complainant and the respondent union. The

last agreement entered into between the parties was dated September 17, 1942 and by its terms continued in effect until July 1, 1944. At the expiration of that agreement nego- [fol. 130] tiations were carried on between the parties looking towards the execution of a new agreement. The parties having failed to reach an agreement, the matter was certified to the War Labor Board, then in existence. After V-J Day that Board issued a directive with which the employer has refused to comply.

Negotiations continued between the parties and were being carried on on November 6, 1945. On that day, the union commenced the practice of exerting economic pressure on the employer in an attempt to compel the employer to accede to requests made by the union. This pressure was exerted by a series of short work stoppages. On the afternoon of the 6th of November at about 1:30 practically all of the employes at both plants of the employer left their employment for the purpose of attending a union meeting. The employes on the night shift did not report for work at all that day. The following day all the employes reported for work at the regular hour. Between November 6, 1945 and March 22, 1946, there were twenty-seven (27) similar work stoppages. Some occurred in the morning and some in the afternoon. Sometimes the employes working on the night shift came in on days on which such stoppages occurred and sometimes they did not.

The officers of the union publicly stated that such work stoppages constituted a new labor weapon and that they were instigated and carried on at the direction of the union [fol. 131] and for the expressed purpose of attempting to compel the employer to accede to union demands.

It is the contention of the respondent union that such work stoppages constitute a strike; and the contention on behalf of the employer that such stoppages are in violation of Section 111.06 (2) (h) of the Wisconsin Statutes.

A strike has been defined as being "An act of quitting when done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer." *Walter Oeflein Inc., vs. State*, 177 Wis. 394.

In the dissenting opinion of Justice Crownhart of the case of the *West Allis Foundry Company vs. State*, 186 Wis. 24, certain tests are set forth to be used in determining whether a strike is in existence or not. He said in that case,

"The real test of a strike must be, are the usual concomitants of a strike still attached to the situation; are the men still out; are pickets kept up; are the union and union papers still publishing notices of the strike; is pressure still maintained on the employer by which he is burdened financially or physically and mentally impressed; are men prevented from accepting employment at the plant by reason of the conditions existing with reference thereto; are strike benefits still being paid; is the action of the employes or union in their behalf to maintain the strike, in good faith with some hope of ultimate success? If any or all of these questions may be answered in the affirmative, there is some evi- [fol. 132] dence of a strike actually existing, and if most of them exist, as they did in this case, then the fact of a strike actually existing is sufficiently established, as the term 'strike' is used in the act before us."

When the union began to engage in these activities it took the position that they did not constitute a strike. It was then the position of the union that these activities might be carried on, the employes not suffer the losses sustained as a result of total unemployment, but that the economic pressure on the employer would be effective in obtaining the desires of the union. It would seem clear that while the act of quitting in this case was done by mutual understanding that it wasn't a quit in the sense of an intention to quit until the demands of the union were granted or an agreement had been reached, but rather an attempt on the part of the employes, by mutual understanding, to determine what hours and under what conditions they would perform any work for the employer.

There are two recent cases, *C. J. Conn Ltd. vs. N. L. R. B.*, 108 Fed. 2nd, 390 and the *N. Y. State Labor Relations Board vs. Union Club of the City of New York*, 286 APP. Div. 516, 52, N. Y. S. 2nd 74, which are quite similar in their facts to the activities engaged in by the employes in this case. Both of those cases in effect hold that where employes withdraw their labor only during limited periods of time, [fol. 133] rather than during the entire working day, and continue to work upon their own notion of the terms which should prevail, which terms are unacceptable to the employer, such acts do not constitute a strike and the employer is justified in discharging the employes, their status as employes being thereby destroyed. Clearly under both the National Labor Relations Act and the New York State

Labor Relations Act, if these activities constituted a strike, the strikers would maintain their status as employes and could not be discharged by the employer for engaging in that type of activity.

Section 111.06 (2) (h) provides it shall be an unfair labor practice for an employe individually or in concert with others "to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike." These activities were instigated by the union leadership for the purpose of and because the union felt that the loss occasioned to the employer would result in the union attaining its demands. There can be no question but what continuous work stoppages engaged in during regularly scheduled working hours constitute an interference with production and thus falls directly within the terms of the section of the statutes above quoted. Each employe engaging in such activity might properly be disciplined by the employer for engaging in such activities. It is therefore our conclusion that these [fol. 134] temporary work stoppages do not constitute a strike, that they are clearly in violation of the above quoted section of the statutes and we have, therefore, caused to be entered an order directing the respondents to cease and desist from engaging in such activities.

Dated at Madison, Wisconsin, this 11th day of May, 1946.

Wisconsin Employment Relations Board, by (S.) L. E. Gooding, Chairman; J. E. Fitzgibbon, Commissioner.

IN CIRCUIT COURT OF MILWAUKEE COUNTY

ANSWER (OMITTING FORMAL PARTS)

Now come the respondents above named, and as and for their answer to the petition of the Wisconsin Employment Relations Board admit, deny, and allege as follows:

I

Admit the allegations of paragraphs 1, 2, 3, 4, 5, 6, and 7.

[fol. 135]

Further answering said petition, respondents allege that they have not complied with and do not intend to comply

with the order of the petitioner unless required to do so by this Honorable Court, for the reason that such order denies to respondents rights afforded them by Federal and State Law and penalizes them for having exercised rights assured to them by Federal and State Law among which rights so referred to are the rights to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. That such order is null and void and of no effect whatsoever for the following reasons:

(a) It is contrary to the provisions of Article I, Section 8, Article VI and the Thirteenth and Fourteenth Amendments to the Constitution of the United States, in that it limits rights of the respondents under Federal Law, statute and constitution to peaceably assemble, freely express themselves, to go out on strike, and not to be deprived of life, liberty, or property, without due process of law, and imposes upon them involuntary servitude;

(b) That it is in excess of the statutory authority and jurisdiction of the Wisconsin Employment Relations Board;

[fol. 136] (c) That it is unsupported by substantial evidence in view of the entire record as submitted;

(d) That it is arbitrary and capricious;

(e) That it is not responsive to any provision of Chapter 111 of the Statutes;

(f) That Chapter 111 of the Statutes has been misconstrued and misapplied to the facts in the instant case;

(g) That if any provision of the Wisconsin Statutes is in support of such order, then the Statute, as so construed, and the order, are null and void and of no effect whatsoever because in conflict with the Act of Congress known as the National Labor Relations Act, 29 U. S. Code, 151-166, and in violation of Article I, Section 8, and Article VI of the Constitution of the United States, and the Thirteenth and Fourteenth Amendments thereto.

Wherefore, respondents pray for judgment dismissing the petition herein, and for such other and further relief as to the Court may seem just and equitable.

In Circuit Court of Milwaukee County

Stipulation (Omitting Formal Parts)

Whereas the above named Wisconsin Employment Relations Board did on the 8th day of June, 1946 commence [fol. 137] proceedings pursuant to sec. 111.07 (7), Stats., for the enforcement of a certain order entered by said board on the 11th day of May, 1946, and

Whereas the International Union, U. A. W. A., A. F. L., Local 232, Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen and Louis Lass, did on the 5th day June, 1946 commence proceedings pursuant to sec. 111.07 (8) and sec. 227.16 of the statutes for review of said order, and

Whereas the issues in both proceedings are limited to legal questions respecting the validity of said order upon judicial review thereof.

Now, Therefore, It Is Stipulated By And Between the parties to the two above entitled actions by their attorneys that said actions may be consolidated for purposes of hearing, argument and decision.

Dated June 19, 1946.

In Circuit Court of Milwaukee County

Judgment (Omitting Formal Parts)

The above entitled matter having come on for hearing on the 16th day of July, 1946 before the court without a jury upon the return of the Wisconsin Employment Relations Board, Beatrice Lampert, Assistant Attorney General, appearing on behalf of the petitioner, David Previant, ap- [fol. 138] pearing on behalf of the respondents and Jackson Bruce appearing on behalf of the Briggs & Stratton Corporation, and the court having heard the arguments and considered the briefs of counsel and having taken the matter under advisement and having on the 18th day of October, 1946 filed its decision and directions for judgment confirming in part and setting aside in part a certain order of the Wisconsin Employment Relations Board.

Now, Therefore, It Is Adjusted, Ordered And Decreed that the order of the Wisconsin Employment Relations Board entered on the 11th day of May, 1946 in the matter of Briggs & Stratton Corporation, a corporation, complainant, v. International Union, U. A. W. A., A. F. L., Local 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, and Louis Lass, Respondents, Case III, No. 1173 Cw-64, Decision No. 953 directing said union to cease and desist from certain unfair labor practices and to take certain affirmative action be and the same is hereby modified by striking therefrom paragraph 1 (a) of the cease and desist order appearing on page 3 thereof; and that said order as herein modified be and the same is hereby confirmed and enforced.

[fol. 139] It Is Further Adjudged, Ordered And Decreed that the International Union, U. A. W. A., A. F. L., Local 232, and its officers and agents, and Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen and Louis Lass shall:

1. Immediately and at all times hereafter while this judgment is in effect cease and desist from:

Coercing or intimidating employees of the Briggs & Stratton Corporation by threats of violence or other punishment to engage in any activities for the purpose of interfering with production of said Briggs & Stratton Corporation or that will interfere with the legal rights of any employees.

2. Take the following affirmative action:

(a) Immediately notify in writing by posting notices in conspicuous places at the respective headquarters of the above named union or offices in the city of Milwaukee and at any union meeting halls maintained by them, and keep such notices posted for a period of at least thirty days from the date of posting, that said union and persons above named will cease and desist in the manner aforesaid.

(b) The above named union and individuals jointly shall cause to be delivered to the Wisconsin Employment Relations Board for posting on the bulletin boards of the Briggs [fol. 140] & Stratton Corporation six (6) copies of the notices referred to in paragraph (a) above.

(c) The above named union and individuals shall cause the Wisconsin Employment Relations Board to be notified in writing within five days from the date of receipt of copy of this judgment what steps they have taken to comply with this judgment.

Dated October 30th, 1946.

By the Court, (Signed) John C. Kleczka, Circuit Judge.

Admissions of Service (Not printed.)
Notice of Entry of Judgment (Not printed.)
Proof of Service, Admission of Service (Not printed.)

IN CIRCUIT COURT OF MILWAUKEE COUNTY

NOTICE OF APPEAL (Omitting Formal Parts)

Please Take Notice that the Wisconsin Employment Relations Board hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the judgment entered in the above entitled matter in the Circuit Court for Milwaukee County on the 30th day of October, 1946, in favor [fol. 141] of the petitioners and against the respondents, which modifies the order of the Wisconsin Employment Relations Board therein described, entered May 11, 1946, by striking therefrom paragraph 1 (a) of the cease and desist order appearing on page 3 thereof.

Clerk's Certificate (Not printed.)
Procedings Before Wisconsin Employment Relations Board (Not printed.)
Certificate of Wisconsin Employment Relations Board (Not printed.)
Admissions of Service (Not printed.)
Notice of Hearing (Not printed.)

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

COMPLAINT OF BRIGGS & STRATTON CORPORATION

(Omitting Formal Parts)

The complainant above named complains that the respondents have engaged in and are engaging in unfair labor prac-

tices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, and in that respect alleges:

1. Complainant is a Delaware corporation, authorized to engage in business in the State of Wisconsin, and its princi-[fol. 142] pal place of business is located in the State of Wisconsin at 2711 North 13th Street in the City and County of Milwaukee and it operates two manufacturing plants in said city and county, one at the address above indicated and the other at 2748 North 32nd Street, in which plants it employs approximately 1800 production and maintenance employees in the manufacturing of various industrial products.

2. The respondent International Union, U. A. W. A., A. F. L., Local 232, referred to herein as the Union, is an unincorporated, voluntary labor association or organization and it has its office at 2709 North 12th Street, Milwaukee 6, Wisconsin, and said Union is the exclusive bargaining agency for complainant's hourly paid employees for the purpose of representing such employees in connection with rates of pay, wages, hours of employment and working conditions.

3. The individual employees, as complainant is informed and believes, are the officers of and also constitute the Bargaining Committee of the said Union and except Anthony Doria and Clifford Matchey are all employees of the complainant.

4. The addresses of the individual respondents, all of whom reside in Milwaukee County, Wisconsin, to the best of the information and belief of the complainant, are as follows:

Walter Berger, 4735 North 51st Street, Milwaukee, Wis.
John H. Corbett, 2438 North 38th Street, Milwaukee, Wis.
[fol. 143] Anthony Doria, 5054 N. Hollywood Avenue, Whitefish Bay, Wis.
Oliver Dostaler, 2455 North 32nd Street, Milwaukee, Wis.
Clarence Ehrman, 1315 West Wright Street, Milwaukee, Wis.
Erwin Fleischer, 3268 North 40th Street, Milwaukee, Wis.
Herbert Jacobsen, 4563 North 28th Street, Milwaukee, Wis.

Louis W. Lass, 2542 North 19th Street, Milwaukee, Wis.

Clifford L. Matchey, 3743-A North 38th Street, Milwaukee, Wis.

5. Since about 1938, the complainant and the Union have, from time to time, entered into a number of labor contracts relating to employment relations between complainant and its employees and the last written contract between the parties expired July 1, 1944 although thereafter, the parties continued in general to operate under its terms.

6. Certain of the terms of said last contract which still govern the parties are as follows:

> "The Union agrees that neither the Union nor its members will intimidate or coerce employes on Company premises, and further agrees not to solicit membership or conduct during working hours any Union activities other than those of collective bargaining and [fol. 144] handling of grievances in the manner and to the extent hereinafter provided."
>
> * * * * * * *
>
> "The regular working week for day workers shall be five days of eight hours per day, namely Monday to Friday, inclusive, with time and one-half being paid for all time worked in excess of eight hours per day and for all work on Saturdays."
>
> * * * * * * *
>
> "The regular working week for piece workers shall be five days of eight hours per day, namely Monday to Friday, inclusive." (Provision is made for payment of one and one-half earnings for over-time and Saturday work.)
>
> * * * * * * *
>
> "The Company agrees that there will be no lock-out of its employes, and the Union agrees that there will be no strike, slow-down or stoppage of work, until all peaceable means of reaching a mutually satisfactory decision on any and all problems have been tried."

7. Since about November 6, 1945, the individual respondents, and the Union, acting, as complainant is informed and

believes, upon the orders, direction and instigation of the individual respondents and with their participation and guidance, have engaged and are engaging in a series of unfair labor practices consisting among others of the following acts:

(a) They have coerced and intimidated various employees of the complainant in the enjoyment of their legal rights by [fol. 145] such acts as causing clothing, tools, and other property of such employees to be cut, ripped, concealed or otherwise injured or damaged and by subjecting various employees to indignities, assaults and threats of violence, in violation of Section 111.06 (2) (a) Wisconsin Statutes.

(b) They have endeavored to coerce and intimidate this employer to interfere with its employees in the enjoyment of their legal rights by endeavoring to compel this employer by overt and illegal acts to enter into some form of a maintenance of membership agreement, although no election has ever been held with respect thereto in compliance with Section 111.06 (1) (c) Wisconsin Statutes, all in violation of Section 111.06 (2) (b) of said Statutes.

(c) They have hindered and prevented by threats, intimidation, force and coercion, including a series of concerted production interferences, the pursuit of lawful work and employment, in violation of Section 111.06 (2) (f) Wisconsin Statutes.

(d) They have combined or conspired to hinder or prevent, at complainant's plants, the use and disposition of materials, equipment and services, in violation of Section 111.06 (2) (g) Wisconsin Statutes.

(e) They have engaged in repeated concerted efforts to interfere with production by causing many employes [fol. 146] frequently, without cause or advance warning, to leave the employer's premises every few days for a few hours at a time, not for the purpose of going on strike, (so respondents claim), but for the express planned purpose of illegally coercing the complainant, and in that connection complainant alleges that on approximately nineteen occasions between November 6, 1945 and February 22, 1946, they have caused such work stoppages and interferences involving on each occasion, upwards of a thousand persons

on one or more shifts and on January 7, 1946 they caused a sit-down to occur involving several hundred persons in many departments, all contrary to the provisions of Wisconsin Statutes, Section 111.06 (2) (h).

(f) They have violated the terms set out in paragraph 6 hereof of said last written contract which terms are in operation between the Company and the Union, in violation of Section 111.06 (2) (c), Wisconsin Statutes.

8. The respondents, through their spokesman, the respondent, Doria, as evidenced by an interview reported on the front page of the Milwaukee Journal of February 10th, 1946, have publicly boasted of their purpose and intent to continue such illegal tactics and unfair labor practices as a device to coerce, illegally, the complainant into compliance with their demands and, as complainant is informed and believes, the individual respondents have actively engaged [fol. 147] in directing, supervising, and carrying out the unfair practices referred to and instructing and requiring the members of the Union to engage in such practices in accordance with the prearranged plan.

9. By reason of the acts and conduct of the respondents, employees of complainant who desire to work are being effectively prevented from or interfered with doing so, and the complainant is now and will continue to be greatly hampered, interfered with and impeded in its operations and production and is sustaining serious loss and damage as the result of the unfair labor practices referred to.

Wherefore complainant respectfully requests the Wisconsin Employment Relations Board to enter its order determining the rights of the parties and requiring all of the respondents and members of said Union to cease and desist from continuing the unfair labor practices referred to and also to suspend their rights, immunities, privileges and remedies granted under Chapter 111 of the Laws of the State of Wisconsin and to make such further order as may be proper under the circumstances.

Dated this 23d day of February, 1946.

Verification (Not printed).

[fol. 148] BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

ANSWER OF INTERNATIONAL UNION ETC., LOCAL 232

(Omitting formal parts)

Now come the respondents above named by Padway & Goldberg, their attorneys, and as and for an answer to complainant's complaint herein admit, deny, and allege as follows:

I

Admit the allegations of paragraphs 1, 2, 3 and 4 of said complaint.

II

Answering the allegations of paragraphs 5 and 6 deny that the terms of the contract set forth therein are binding upon or still govern the parties thereto since the expiration of the written contract of July 1, 1944.

III

Answering the allegations of paragraph 7 and all subsections thereof, respondents deny that they have in any way committed any unfair labor practices under any of the [fol. 149] provisions of Section 111 Wisconsin Statutes, and in this respect allege that if, in fact, any unfair labor practices or illegal acts were committed by any individual or individuals such acts were neither ordered, directed, instigated, participated in, accepted, ratified or condoned by the respondents.

IV

Answering the allegations of paragraph 8, respondents deny that any of the tactics or practices in which respondents have engaged are illegal or constitute unfair labor practices under Section 111, Wisconsin Statutes.

V

Answering the allegations of paragraph 9, respondents allege that if, in fact, there has been any prevention or interference with work, operations or production, and if, in fact, complainant has sustained any loss or damage, all of

such losses or damages result from the exercise of rights guaranteed to the respondents under the terms and provisions of Section 111 Wisconsin Statutes, the National Labor Relations Act, (49 Stats. 449 (1935), 29 U. S. C. Paragraphs [fol. 150] 151-166 (1940).), and the Fourteenth Amendment to the Constitution of the United States.

VI

Further answering the complaint of the complainant, respondents allege and show to the Board that the complainant is engaged in business affecting interstate commerce as such terms are used in the National Labor Relations Act, and applied by the decisions of the National Labor Relations Board, and the Federal Courts, and that in March of 1938 the National Labor Relations Board assumed jurisdiction over a controversy respecting the representation of employees of the complainant for the purposes of collective bargaining and certified that the respondent Union was the duly designated collective bargaining representative for all hourly paid employees of the complainant, and that from that date to this time such determination has not been set aside, reversed or modified by any appropriate Agency, and has not been challenged by the complainant herein.

[fol. 151]

VII

Further answering the complainant's complaint, the respondents allege that any order which may be entered herein or any Statute upon which such order may purportedly be based, in accordance with the prayer of complainant, would be unconstitutional, void, and of no effect whatsoever because contrary to the provisions of Article I, Section 8, and Article VI of, and the Fourteenth Amendment to the Constitution of the United States in that such order and Statute would limit rights of the respondent under Federal Statute, as well as the right to peaceably assemble, freely express themselves, and not to be deprived of life, liberty, or property without due process of law.

Further Answering Said Complaint, respondents deny each and every allegation, matter, fact, and thing therein contained, not hereinbefore expressly admitted, qualified or denied.

Wherefore, respondents pray that the complainant's complaint be dismissed.

BEFORE WISCONSIN EMPLOYMENT RELATIONS BOARD

Transcript of Record of Hearing

Pursuant to notice, this matter came on for hearing before the Wisconsin Employment Relations Board in the Milwaukee County Court House, Milwaukee, Wisconsin, on Tuesday, March 26, 1946, commencing at 2:00 P. M.

[fol. 152] Present: Chairman L. E. Gooding, Commissioner J. E. Fitzgibbon.

APPEARANCES:

Wood, Warner, Tyrrell & Bruce, by Jackson M. Bruce and Robert Casper, Attorneys, for the complainant Padway & Goldberg, by David Previant for the respondents.

Mr. Bruce: At the time of the conclusion of the hearing in Case No. 11,1157 Ce-176, the Board had under consideration the question of whether the allegations in the company's answer in that case relating to the alleged unfair practices on the part of the union, could be offered by the way of additional defensive matter and I presume we should have a ruling on that.

Chairman Gooding: We are ready to rule on that. That will not be received for that purpose.

Mr. Bruce: I take it then the Board will proceed to make its order and decision on the evidence as given up to the time of the conclusion of the final hearing.

Mr. Previant: Is this going to be a part of the other case.

Chairman Gooding: No.

Mr. Bruce: Mr. Previant has just suggested that it be [fol. 153] stipulated that all evidence taken in the other case just referred to be made a part of the record in this case. I have no objection although we feel such evidence can be covered rather rapidly by witnesses that will be called any way and it might confuse the record. If this proceeding should go further, it might be difficult to obtain testimony from the other case to be added to the record here.

Chairman Gooding: All right.

Mr. Bruce: This is a proceeding brought by the company. It is asserted by the employer that defendants have been guilty of certain unfair labor practices in violation of the Wisconsin Employment Peace Act. It is asserted, and the

evidence will establish, that respondent union is the bargaining representative of certain production employes of the company and that, commencing in early November of 1945 and to the present time, there have been a series of work stoppages and interferences with production commencing at various times during the day and without warning, in which there is a concerted walk off from the job, presumably without reason other than an alleged reason that the employes desire to attend certain union meetings. There have been also a series of intimidating and coercive acts against individual employes which will be developed in the course of the proceedings. It is believed the evidence, when [fol. 154] completed, will establish a violation of a number of subsections of Section 111.06 (2).

RAYMOND W. GRIFFITH, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I live at 6178 Washington Circle and am employed by Briggs & Stratton, a Delaware corporation operating two plants in the city of Milwaukee. I am Vice-President in charge of manufacturing, and have been an employee of the company for approximately eighteen years.

Briggs & Stratton produce two principal items; a single cylinder gas engine for various portable equipment, and locks for automobiles. There are many kindred products.

The plants of the company are commonly referred to as the East Plant and the West Plant. The company's approximate 2000 employees are about evenly divided between the two plants. The two plants are a mile and a half apart.

As an officer of the company I have participated in company negotiations with the representatives of its employes since 1936. I am familiar in general with the progress of labor relations at the plant.

[fol. 155] The bulk of our production employes are represented by the U. A. W. A. F. L., Local 232 in their labor relations. That union was certified some years ago by the National Labor Relations Board as the bargaining representative of the employes in question. There is no other union which has bargaining relations with us.

The company has from time to time had written contracts with the union covering working conditions, wages, and hours. Exhibit 1 is a copy of the last written contract.

(Exhibit 1 received in evidence over objection that it had no materiality since the contract expired in 1944.)

Negotiations were had between the union and company in June, 1944 with respect to a new contract. The parties could not resolve their differences and the matter was ultimately referred to the National War Labor Board.

Mr. Bruce: Perhaps Mr. Previant at this point we can stipulate some of this material which you suggested before. We can stipulate that following the panel hearing that was held November 10 and 12, 1944 a panel report was made on March 24, 1945. On August 30, 1945 the so-called directive order of the Regional Board of the 6th region was issued. On September 12, 1945 the company filed a petition for review of certain portions of the Regional Board order, the petition being filed for review by the National Labor Rela- [fol. 156] tions Board and about September 11 the union filed a petition for reconsideration and review with the National Board. It is further stipulated that about January 17, 1946, a directive order of the National War Labor Board dated December 20, 1945 was received by the parties. That last stipulation can be corrected to indicate the company received its copy of the directive order on January 17, 1946, although the union received its copy on December 31, 1945.

Mr. Previant: We are willing to stipulate with counsel if those things are the facts, but we will object to the materiality of any of such facts with respect to the matters now before this Board.

Testimony of Mr. Griffith Continued:

During the pendency of the case just referred to and after the panel hearing we had negotiations with respect to differences until in the early part of 1945. I was present at the panel hearing.

The parties in the proceeding before the National War Labor Board were the company and this same union. Anthony Doria, one of the respondents in this case was also present at such hearing as were Clifford Matchey, Clarence

Ehrman, Walter Berger, Herbert Jacobsen, and Louis Lass. There were also other persons at that hearing on behalf of both the union and the company.

[fol. 157] At the outset of the panel hearing there were some introductory remarks by the chairman and brief statements of the union position by Mr. Doria and of the company position by Mr. Otto Jaburek, attorney in that proceeding. After the preliminary statements, I recall that the chairman of the panel asked: "The parties are operating under the terms of the expired contract?" I answered "yes".

(Objection to this as immaterial and calling for hearsay testimony overruled).

The union representatives previously mentioned were present and heard this statement. No one made any statement contradictory to the answer that I gave. Since July 1, 1944, the parties have been following in general the terms of the contract, particularly with respect to such matters as seniority, grievance procedure and similar items excepting as modified by agreements.

(Objection that testimony has no bearing on whether we are acting pursuant to an agreement, and that it is incompetent, irrelevant and immaterial over-ruled.)

Some of the questions before the War Labor Board covered maintenance of membership, check off, vacations, wages and similar items. After V-J Day new demands were made on the company by union representatives, primarily relating to wages. There has been a number of bargaining sessions since V-J Day down to the present.

[fol. 158] In November, 1945, the shift hours at the East Plant were from 8:00 A. M. to 5:00 P. M. for the first shift and from 3:30 P. M. to 12:00 midnight for the second. The overlapping of hours is because the second shift is but a small fraction of the first. At the West Plant the schedule is from 7:00 A. M. to 3:30 P. M. and the second shift from 3:30 to midnight. Those have been regularly scheduled working hours for considerable time and are known to all employes.

On November 6, 1945, there were 1544 employes in the bargaining unit represented by the union in question here. Prior to such time the plants had been operating steadily. The largest part of the plant was on a five-day week.

On November 6, 1945, the first walkout occurred at 1:30 in both the East and West plants. No warning was given that anything unusual was to happen and 1322 employes on the first shift walked out. The second shifts, 205 employes, did not report for work. No employes returned that day but on the following morning, everybody came to work as usual.

On November 6, there were materials and regularly scheduled work to be completed. The company intended and desired a day's work. Only 7 employes stayed at work at the East Plant and 10 at the West Plant.

No reason for this walkout was known at that time. No [fol. 159] union officials intimated what was to transpire. We were not told why the employes had left the plant until some time later. No employes were disciplined, laid off or discharged as a result of this occurrence.

Twenty-seven walk-outs occurred from November 6 to March 22, 1946.

The second one was on November 16. At the East Plant, 614 of the first shift walked out at 1:30 P. M., and only 13 remained. The second shift reported for work and worked until midnight. At the West Plant, 746 left at 1:30 P. M. The entire second shift of 182 came in at 3:30 and worked until midnight.

I have prepared an exhibit which shows the shift hours, the number of persons who walked out on each of the walk-outs. I have been reading from such exhibit in testifying concerning the first two walk-outs. The last page is a sort of summary. The lefthand column shows shift hours at each plant; the middle column shows hours worked. The third column shows the number of persons who left the plant and the last column shows the number of employes who stayed and worked. All figures relate to production, hourly paid employes. By adding the number of workers who walked out to the number of workers who remained, one arrives at the total of production employes on any particular day.

[fol. 160] With one exception employes who walked out did not return to the plant before their shift ended. On about the third walk-out the timekeepers came back to work after a meeting and from that time the timekeepers stayed at work. Timekeepers are members of the bargaining unit.

On January 7, 1946, a number of employes at both plants engaged in a sit-down demonstration. It started at various times during the day but in each case it lasted as long as

the particular shift. This consisted in general of a cessation of work by certain employes without their leaving the plant.

I have prepared Exhibit 3 which is a summary with respect to the number of employes who stopped work, the number in each department, and the departments in which the sit-down took place. These figures are broken down between the East and West Plants, and are taken from company records.

(Exhibits 2 and 3 received in evidence.)

About two or three walkouts occurred before I was told why they had occurred. I was told by the Bargaining Committee, which includes some of the respondents referred to in the complaint, including Mr. Doria, that the reason for the walk-out was so employes could attend a meeting of the union. In discussions with the union Bargaining Committee relative to the contract I was informed that the walkouts [fol. 161] were spontaneous and not of the union's official actions—that it was the employes that were causing the walkouts. I received this information about the middle of December.

Generally speaking, at least in the early stages, these walkouts occurred in early afternoon. When the walkouts occurred on the first shift, sometimes the night shift would come in and work and sometimes not. If the night shift returned in one plant it returned in both. It was uniform in both plants.

In more recent weeks some of the walkouts occurred as early as 8:30 A. M. On January 25, the walkout started at 11 A. M., on February 4 at 9:30 A. M.

Referring again to the tabulation, after January 8, 1946, there is a third shift. Prior to such date the number of employes at the West Plant, which was the only plant at which we had a third shift, were so few that we did not deem it a third shift until January 8. After such time we definitely recognized a third shift. The hours of that shift were from 11 P. M. to 7 A. M., and the shift hours at the two plants continues the same for all shifts down to the present.

My tabulation is to March 22nd, last Friday. There have been no occurrences since Friday unless one occurs this afternoon.

These walkouts have greatly curtailed production. Ship- [fol. 162] ments to customers have been delayed. A large

inventory has piled up because our factory is not using materials as fast as they were scheduled to come in.

Work at our plant is scheduled a month or 45 days in advance on the basis of working full time. Such scheduling is dependent upon orders, receipt of materials, delivery date for customers, etc. These walkouts have reduced shipments to a large extent. During the period of these walkouts our general overhead expense is increased. For instance we need certain materials such as crating on the second shift. We normally depend on the first shift to produce it, but since the first shift was not there, the job was forced on the second shift. In that the main amount of work is finished on the first shift, it follows that when the first shift doesn't work and we do assembly work on the second, it is extremely difficult to keep the schedule going at all. Also, during the walkouts, office expense, salaries of office workers who have not walked out, and items of expense such as advertising, taxes and interest have all continued.

Prior to V-J Day we worked a 48-hour week. Within a week after V-J Day, the schedule was reduced to 40 hours a week. Thereafter we used the pre-war plant of scheduling overtime or Saturday work for departments where work was particularly necessary but not operating the entire [fol. 163] plant on the basis of an entire 48 hour week. The Tool Room almost immediately went back on a 53 to 54 hour a week schedule, including overtime and Saturday work as it was necessary to get tools ready for operations in the plant. We were in the process of re-tooling and re-conversion for some weeks. There were other spots throughout the plants, especially the West Plant where we began to use people on over-time and Saturdays. It was not until November 14 that both plants were again placed on a 48 hour week work schedule. This schedule included operating on Saturdays. A notice to that effect was posted, and work was scheduled for Saturdays thereafter. Exhibit 4 is a copy of the notice referred to. I signed the original on behalf of the Company.

After we got back to this full scheduling, employes refused to work Saturdays. I discussed this matter from time to time with the union and told them we were anxious to work. They refused to permit employes to work.

Our plant was open and we intended to operate on December 24th. A number of persons came to work on that date and also on December 31st. I have prepared a tabulation showing

the total hours of work which were available November 6 through March 23 and the hours of work lost or not worked as a result of these walkouts, including time lost January 7, 1946. Exhibit 5 is such tabulation. This also indicates the total hours of pay lost as a result of these walkouts and [fol. 164] other occurrences referred to. The hours of pay column includes the bonus time for working over 8 hours a day or 40 hours a week which increases the amount above the number of hours worked. For example, in a given period at the East Plant, there would have been 917 hours of work available on the first shift, but 993 pay hours, the difference being adding the hours for overtime. This tabulation is broken down to show the facts with respect to each shift at each plant, and includes information as to total hours of pay lost from November 6, 1945 through March 23, 1946.

This series of events has affected the turnover of employees. A great many new employees have come to work but left. There has been an unusual turnover of new employees since November 6.

These walkouts have received considerable publicity in the Milwaukee press. Exhibit 6, the Milwaukee Journal of Sunday, February 10, contains such an article. [The parties stipulate that a story appeared in the Milwaukee press relating to these walkouts.]

On a recent Saturday about half of the employees came to work. We had no advance warning that they were coming except from different employees in the factory through their direct supervisory people. We heard that in the previous meeting they had decided to come to work on Saturday. This meeting was a day or two prior to Saturday. The union contract calls for time and a half for overtime [fol. 165] and Saturday work is such overtime.

After the employees came to work on the Saturday just mentioned the company posted a notice on its bulletin board with respect to any future work on Saturdays. Exhibit 7 is a copy of that notice. Reasons are therein set forth for not scheduling production work on Saturdays.

The bargaining committee of the union told me repeatedly that they would not call a strike at the Briggs-Stratton plant. They have stated that these walkouts are not strikes. These statements were made a number of times in bargaining negotiations on the terms of the contract by members of the bargaining committee. I cannot recall the individual

who made these statements but they were made by someone or other of the respondents in this action.

The company has sustained substantial loss and damage as a result of the production interference I have described. The company has not disciplined, laid off or discharged anyone as yet in connection with these occurrences. I have done everything in my power to induce the bargaining committee to stop this series of walkouts.

The union has insisted on a maintenance of membership clause in the contract down to the present time. No vote has [fol. 166] been taken on the subject under the Wisconsin act until on or about March 21, 1946.

A number of incidents have been reported to me of things that have happened to employees in connection with their relation with other employees. I witnessed a minor incident of this character early in these walkout proceedings at the east plant. Certain women employees on the fourth floor wished to remain at work instead of walking out. A group of employees gathered around them booing and calling names and threatened them that they should walk out with the other employees. I cannot testify as to what the threat was; the threat was more apparent in their actions than any deliberate remarks.

Mr. Doria has stated many times since November 6 that if certain demands with the union were not acceded to there would be further walkouts.

Cross-examination.

By Mr. Previant:

In the operation of our plant we get a substantial quantity of raw material outside Wisconsin. There is no reason why I should know, but my opinion would be that more than 50% comes from within the state. A substantial amount either by weight or dollar-wise comes from within the state. [fol. 167] It is not true that our finished product all goes to plants outside Wisconsin. A good share goes outside the state, but I don't think I could say how great a share. Substantial quantities of automotive locks are sent to Michigan.

Since Local 232 was certified by the National Labor Relations Board as the collective bargaining representative there has been no other representative certified by any other agency. We have recognized that union as the majority representative from 1936 to the present. A recent vote

conducted by the Wisconsin Employment Relations Board showed that more than two-thirds of the employees voted in favor of an all-union agreement as proposed by Local 232.

Since July 1944 the company has followed generally the trends of the contract that expired July 1, 1944. Prior to July 1st we had received notice from the union that it wanted to negotiate a new contract. There is no question in my mind that the agreement by its terms did expire July 1, 1944. Although the contract states specifically and plainly it expires at a certain date, at that time we were in a state of war, and it was my understanding that the government desired the parties should continue to operate under the terms of their contract until a new one was resolved. I think that this actually happened in our case. My opinion is based on my understanding of the national policy during the war. It was my understanding that as long as the country was in [fol. 168] a state of war, orders of the war labor board should be complied with. We appealed to the national board in a legal way in accordance with our legal rights but at the time the board rendered a decision the war had ceased. Because the war had ceased we did not believe we were morally or legally obliged to comply with such order.

Since July 1944 no one on behalf of management has expressly agreed that the old contract should continue until a new one is signed. It was never discussed. I do not recall a discussion over a year ago with Mr. Matchey in which I asked why he permitted union activity on company time. The statement was made that the union was not violating the terms of the contract. I do not recall any conversation such as you have inquired about. I made an entirely different statement than you asked about. The company has never asked that I know of for a statement from the union that the 1944 agreement was in effect. I never asked and I don't believe anybody else has asked for such a statement.

There have been many changes since July 1944 with respect to wages. There have been no changes with respect to minimum rates since July 1944. The bonus was made a part of pay wages. The company has continued to pay double time for Sunday work and time and a half on Saturday up [fol. 169] until the present time. I don't think that employees who worked on Saturday and Sunday were denied premium pay for that work.

Mr. Dorsey is superintendent at West Plant. He has authority to speak for management. It could and could not be

that if Mr. Dorsey said that there was no obligation under any agreement to pay premium wages for Saturday and Sunday work, that that would be expressing a policy of the company.

Changes have been made with respect to vacations. The grievance procedure of the old contract has been followed. Foremen are presented with copies of grievances to stewards in the same manner as before July 1944.

We have not been in the practice of getting the consent of the union to scheduling work on Saturday. Our contract says the regular work week shall be Monday through Friday. We have been operating exactly the same since July 1944 as before. Prior to July 1944 it was customary to change the hours without notification to the union in cases where the number of people involved were few. In other cases I would call the union and tell them to shorten or lengthen a shift. We never considered the five-day week an exact work week. We had a provision in our contract for Saturday work and after operating through the war on a six-day basis I think the six-day week became just as common as the five-day week.

[fol. 170] I was not in the plant January 7, 1946 but was ill at home. I don't know what happened with respect to the alleged sitdown on that day other than what I have been told. I have no knowledge as to whether any union officials tried to stop it other than what I may have been told.

I expressed my opinion to the committee several times about violating the valid existing contract between the company and the union. I stated in negotiations on a new contract that I thought the union had violated the contract. They claimed that they had exhausted all peaceful means of arriving at a settlement and that they had not violated the contract. This was three months ago in December. I had previously claimed that there had been a violation of the 1944 contract. It came up in the conversation several times but I cannot fix the date.

(Union answer to counterclaim by Briggs-Stratton in Case No. II, 1157, Ce-176 received in evidence.)

Mr. Larkin, an accountant in the employ of Briggs-Stratton prepared Exhibit 5. Column 4 states that it is the percentage of lost time to time worked. The comparison is not of time lost to all time available. I don't believe this is deceptive.

The union has not unequivocally insisted on maintenance of membership, if the company would agree to a contract which did not contain clauses which the company desired. [fol. 171] I have been advised that the union has stated that it is willing to forego certain security if the company is also willing to forego certain security.

I think the damage to the company is in direct proportion to the time worked and time lost and if the employees had gone out and remained on strike until now the company losses would be greater.

I believe there were some 19 matters in dispute before the War Labor Board. I believe the company participated fully before the panel of the War Labor Board, the Regional Labor Board, and the National War Labor Board. We filed comments, briefs and appeals. I believe we did challenge the jurisdiction of the board during those proceedings. I am not clear as to whether we challenged jurisdiction during the proceedings or after the final directive came down. To this date the company has not complied with any directives of the National War Labor Board dated December 31, 1945 directing maintenance of membership clause, the check-off clause and grievance procedure clauses in the agreement.

[Stipulation between parties that Briggs-Stratton Company is engaged in interstate commerce under the terms of the National Labor Relations Act.]

[fol. 172] Redirect examination.

By Mr. Bruce:

Any changes made in the contract which has been introduced in evidence respecting wages, vacations, etc. were made as a result of agreement between the company and the union. Union representatives at no time told me they deemed the contract of July 1942 not to be in effect or not to have been continued.

I don't think it is correct to say that the union indicated to me in the course of negotiations that it would not insist on maintenance of membership providing it got certain concessions from the company. The union has offered to make a contract on issues on which the company and union have agreed i.e. the seniority and grievance procedure, vacations and other more minor paragraphs. They suggest we make an agreement on those clauses only and on wages and go on

operating on that basis. The company's position has been that it must know what days and hours it is going to operate.

I have stated in the course of negotiations that I must insist upon a clause which would require the people to work, and to stop these walkouts. The union has stated in substance that it would go along on this basis without the maintenance provisions providing there was no prohibition against them so far as the continuation of the walkouts is concerned.

[fol. 173] ANTHONY DORIA, being duly sworn, testified adversely:

Cross-examination.

By Mr. Bruce:

My name is Anthony Doria. I live at 505 North Hollywood, Whitefish Bay. I am employed by the International Union, UAW AFL as secretary and treasurer.

Headquarters of the International are at 231 West Wisconsin Avenue, Suite 1013. There are some 350 other locals of the International in addition to 232. The general offices of the International are here in Milwaukee but the president is not a resident here. He is Lester Washburn of Oconomowoc. I do not have copies of the articles or charter and by-laws of the International here. The charter would not be available because it is issued and retained by the AFL. I could produce a copy of the constitution tomorrow. The constitution will outline completely my duties as secretary.

One of my duties as an international officer is to advise and counsel local unions in the conduct of their affairs. As to Local 232 I have only acted in the capacity of a trustee of the local union. As trustee I have participated in the affairs of that union particularly with respect to negotiations and relations with Briggs-Stratton Company.

[fol. 174] The president of the local union is John H. Corbett. The membership of the local union is the highest authority under terms of the constitution. Membership elects certain officers and committees as designated in the constitution whose duty is to carry out the direction and desires of the membership. The union officials and bargaining committee have no greater duty to recommend courses of procedure, to prepare the drafts of contracts and to advise

membership with respect to the position to be taken on particular issues than is the right of any other member. The purpose of the committee and officers is to carry out the desires and directions of the membership.

I have actively participated in negotiations between this union and Briggs-Stratton for a number of years. I have more or less acted as a union spokesman. I presented the case for the union before the panel of the War Labor Board. The union was not represented by counsel or attorney other than as I represented them.

I have been full time in union work since about 1936. I am now 37 years old. This is my second term as secretary of the International Union. The first term was two years and the new term started November 26 for another two years. I have been an officer of the local union I believe since 1939, within two years of its inception. I left the employ of Briggs-Stratton at the request of the company to [fol. 175] go into union work. It is approximately correct to say that I have done no other work than union work since I left the company. I have participated in at least a majority of all meetings between the company and union in the last two and one-half years.

I have seen the Milwaukee Journal article previously marked Exhibit 6. I am familiar with the fact that a copy of that article was attached to the answer of Briggs-Stratton in connection with the complaint brought by the union against the company, I have read the article completely.

Sometime prior to February 10 I had an interview with Samuel N. Sherman who I knew to be a reporter for the Milwaukee Journal. I understood that he was generally in charge of Journal labor news reporting. The subject of our discussion was Briggs-Stratton labor relations.

Mr. Sherman stated that he had obtained some information from other people in the plant and that he would write it as he had it or I could clear up some points for him. The testimony which he had was entirely different than the actual conditions surrounding the case. He had been instructed to run a feature article by the paper.

I think I had several telephone conferences with Sam Sherman and one with another member of the Journal staff relative to the preparation of the article.

I don't know whether Mr. Sherman conferred with any [fol. 176] one else besides me. I believe in an effort to reach me he did contact another officer of the International Union

prior to the time he was able to reach me. The principal source of information could be divided between me and the source that he had which prompted him to call me. I would and did give him as nearly accurate information as possible. I gave him factual information and I expressed my own opinions quite at length.

My factual statements were not misquoted in this article but I do not believe the tenor of the article is designed to encourage labor and we certainly believe the article to be more harmful than beneficial. The trend of the article is much in line with what I had said, generally speaking.

(Exhibit 6 received in evidence.)

Looking at the article there are various things which I consider untrue or incorrect. First there is a reference to a new labor weapon on the first page. We have not tried to name it, and it was probably created by the paper to give the article news value and to make it worth while. I did not use the words "new type labor weapon". This was brought in by Sherman and in asking me questions he referred to it as something new and he himself referred to it as such. I did not tell him not to use that expression; it would have done me no good to tell him that.

It is difficult for me to recall the identical words of a telephone conversation. I did not think the paper would devote [fol. 177] as much time and ink as it did or we would have prepared something elaborate.

The only other incorrect reference is the one to neutral boards. This doesn't make sense. I don't know what I did say to him other than I meant any agency of government that might have jurisdiction in these matters. I am referring to the portion of the article on page 2, column three. and the second page, the first paragraph where it says, "Under the new method, Doria explained, meetings are called for any one or more of three possible reasons—any new development in negotiations which might arise with respect to neutral boards, any development in direct negotiations with management and finally, any time the leaderships feel management has started a rumor detrimental to the union's security." I probably used some other expression than neutral labor boards.

We do not know what the name of this series of walkouts is. We know it is a work stoppage, but what you would call it would probably be as good as anything. The Journal called it a new labor movement and I think flattered it

somewhat. I would say definitely that the intent of the work stoppages is to interfere with production. There would be no object of union economic pressure that did not interfere with production.

The plan of walkout was my idea. I was considering something that was not easy. I wanted to avoid the hardship [fol. 178] of a strike and I recommended it to the local union to stave off a full-fledged strike. The membership accepted this in place of a full-time strike. The union contemplated a full-time strike when it met on November 6. The union wanted to use some form of economic pressure particularly when it became evident that the company would not comply with the Board directive, but this method was accepted to replace the full-time strike.

As far as I know the continued use of this is a new feature; however, work-time stoppage is as old as the strike itself.

There was a union membership meeting called to consider a strike last fall. This was one of several things submitted for the consideration of the membership. The bargaining committee and officers of the union considered and agreed that this plan could be submitted as another issue to be considered when the union met for the purpose of voting a strike, but no one took the position as to what would be done until the members acted. I pointed out to the membership the advantages of this procedure as it is my duty in the office I hold. I first pointed out their objective, and when the objective was clearly in mind they could then decide what course to pursue. The objective was to bring economic pressure against the company to force the company to agree to the directive of the board.

[fol. 179] The primary issue was not the question of maintenance of membership. This union would never have voted that procedure had maintenance of membership been the only issue. It was one of many issues.

Before taking this up with the local, I even reviewed it with officers of the general CIO organization. They did not think it could be done, but said if it works, we will try it. I understand that it has been tried elsewhere. There has been no correspondence with the International on this matter. There has been only oral and telephone conversation. We have requests from approximately 350 local unions on how it works. I have answered none of them. I waited to

see the outcome and when the experiment is completed we will give them the answer.

The membership accepted as their own the recommendation I made, and made it their own instructions to the board. The plan was to be able to have such control that when anything threatened our security in the plant we would be in a position to bring the members together to counteract acts against our union. Control was to be exercised, of course, through the members of the committee and through the offices that the local union holds. The execution of the plan was to follow the instructions of the members in notifying them when the union would create a stoppage of work for the pur- [fol. 180] pose of attending a meeting. The union committee would determine when they felt it necessary to exercise that control on the basis of the authority granted to them by the membership. It was our desire, at least our hopes, that union membership would attend the meetings. Membership is a very substantial portion of the entire production unit.

It was not necessarily one of the features of the plan to notify the company in advance of any contemplated walkout. Where conditions warranted, the recommendation of the committee to membership was that the steward body, etc., could be advised to notify their foremen at the same time membership was notified. Members were notified as much as fifteen minutes in advance of the walkout. I don't know if the company had advance knowledge or warning of the first walkout.

At conferences which followed these work stoppages, the company did not even mention them. At least four or five conferences were held after the work stoppages started where no reference was made to them at all. I would not say the company restrained its curiosity. The company doesn't want to let on any serious pressure is being brought to bear. The only reference which the company has made to stoppages is to request that provisions be incorporated in an agreement between us that would prevent these work stoppages for the life of the agreement and that has [fol. 181] been the only reference made to them. The union has agreed to do it any way they want, to accept and give security or forego security and we will forget about it. The union has taken the position that it is not going to lock up every possible weapon and grant to the company the right to use anything at its disposal. With reference to the union

security element in the contract, as long as the contract incorporates some semblance of security that guarantees to us the ability to maintain a union without interference from management, we would guarantee to the company that we would not engage in work stoppages during working hours for the life of the agreement and until grievance procedure was exhausted.

The company has been notified that they could be very instrumental in avoiding these meetings if they would quit starting rumors intended to undermine the union. Every walkout has been called for the purpose of attending a union meeting, and the union meetings have been attended by the extreme majority of the people working. I don't think any specific time was set, but the majority of meetings have been held in the afternoon. There has been no refusal to permit the second shift to come in. The second shift refused to come in to work and took such action itself. On many occasions they have decided to go back to work. That is entirely up to the second shift. The real purpose of the walkout has [fol. 182] been to interfere with production, but this did not require the staying out of the second and third shift. This happened because the second and third shift would come to these meetings and in a group vote not to go to work. If they voted to go to work they went.

Returning to the matter of the Milwaukee Journal article, I will be very frank. I had some argument with Sherman on the method in which this article was written. Before answering your question of whether the quotations of my remarks, excepting those already referred to, are correct, I would like to read it over and mark those facts.

With the exception of the two changes that I made a while ago, only one other thing requires correction. The reference to the issue as being an all-union shop. This is not a quotation but a reference. The issue is not an all-union shop, that isn't an issue. Otherwise I would say I have been substantially correctly quoted.

Examination.

By Mr. Previant:

In answering one question for Mr. Bruce yesterday I wanted to point out the so-called pressure in negotiations which I think we are entitled to under the law, was one

important feature of it. There is more than just that one purpose of these stoppages, however, and the other factors [fol. 183] mentioned in that newspaper article are important. The decision to use a program of this kind was predicated on all of these factors.

LUCILE A. KANZORA, being first duly sworn, testified:

Direct Examination.

By Mr. Bruce:

I reside at 2850-A North 21st Street. I am an employe of Briggs & Stratton and will have been in their employ eleven years in September. I do packing and factory clerical work in the West Plant. I have done this type of work for a number of years. I am not a union member. I have been requested from time to time to join the union.

On several occasions I have been approached by the members and I have never at any time given any encouragement. I simply stated I would think it over. In fact I was told I have had enough time to think it over but I had never stated I would join. On January 7 I started my work as usual and all of a sudden I noticed everybody stopped so I stopped too, I felt in due respect to some of the people that were very nice up there. About 7:25 I noticed several girls walked down to where I was standing and before long a whole group of them were in front of me. Several had approached me with union cards and I repeated to them I would think it [fol. 184] over. They told me I had had enough time to think it over. Around 8 they had all left. At 8:30 they came back and stood there until about 9:30 when there was a meeting. While standing there they booed and heckled and made various remarks during the course of that time. The remarks were derogatory to me.

After lunch I filed correspondence—I asked to have something to do. I worked until about 3:30. I had padlocks on my locker plugged on January 8, 9, 15, 16 and February 19. I purchased three myself and the company furnished me with two. In one case it must have been hammered on the bottom with a hammer. On other occasions papers and matches were stuck way up and another time it had been hammered. The locks had to be sawed off five times to get into the locker.

During the week of January 28, I believe it was on January 28, an unusual number of girls were lined up in the sections of the ladies toilet around twenty minutes to eleven. I waited and they would not let me in. Each time anyone came in, they would stay until a union member was in front of the section. I just stood and waited until all were empty and the girls about through being lined up and I went in and came out. The following day I went in early and had no trouble. On February 1, I went in at 10:25 and as I went in several girls went into the sections and filled them up [fol. 185] except for the first two. I suspected something would happen and before I could get out, over the top of the section came a bucket of water. The back of me got wet.

During this same week, one day I went in and on the first section was "reserved for a scab." I avoided going in there like the rest of the girls.

During the noon hour of February 7 I was sitting in the place where I usually do reading and about 11:10 I noticed some girls came down. I just kept on reading and before long I had everybody there from the various parts of the building heckling, throwing paper clips, pennies and gum at the desk where I was sitting. The usual booing and heckling went on and that afternoon I reported it. I stayed there again the following noon and the same thing happened. They all started coming in, but in the meantime they were spoken to and sent back. Since that time I have been going out at noon.

There were no demands that I join the union, but I have been called a scab and what have you. I have had various remarks hurled at me and several remarks have been made that I have been trying to get around some of the bosses which I don't think is a very nice remark. My husband was in the service but is out now.

On three occasions a new girl has started in our department with me. The first girl came and they walked out that [fol. 186] day at 9:30. The following day they walked out at 1:30. The following Monday she did not come back. We had another girl that worked one day and did not come back. It wasn't the walkout for the second girl but I had seen some of the people talk to her about various things in the plant. The third girl worked one day and before the end of the day one of the fellows on the floor gave her a union card and she did return the following day.

On January 7 a lot of accusations were made and clips, money and gum were thrown. One girl said if I would sign the card she would pay the initiation fee plus one month's dues. I did not even answer. Another girl said she would fix up my clothes for me. There was a reply from another girl said: "What if there is a locker," she could saw that off and take care of that.

I am still working at the plant. I walked out until January. Since a Wednesday, I can't remember the exact date, I haven't gone out. I did walk out in fairness to some of the fellows that had been very nice to me. My own preference was to stay and work.

[fol. 187] Cross-examination.

By Mr. Previant:

I would mark down on another sheet of paper these entries when I got home at night. I jotted them down on this card yesterday, I believe. I don't have the notes with me. I did not keep the notes at the suggestion of anyone else but at my own choosing. I had no specific purpose, just to see how many things could happen.

I quit the union I believe seven years ago this fall. I had been a member from the time it started up until that time. I did not get a promotion from the company about the time I quit the union. My work has changed since I have been employed at Briggs & Stratton. I was employed as an inspector; my present job is packing parts and clerical. I am making more now than when I started.

I do not know the definition that the union gives a scab. In my mind I don't know what is meant when another party calls someone a scab. I presume that it means one who does not belong to the union. I possibly knew if I were called a scab it was because I refused to join the union. It is my opinion that all of these things happened because I refused to join the union.

I never promised to join the union. I remember having said that as soon as my husband returned from the service I would think it over but I did not know what our plans would be. My only doubt was whether I would continue to work there.

[fol. 188] I was first asked to join at the beginning of November, 1945, before my husband returned. I worked from 1937 until November 1945 without molestation as a

non-union employe. Nobody bothered or disturbed me. I don't recall that I was asked during that time to join the union.

I don't know who plugged those locks. I don't know if it was some non-union man who wanted to get the union in trouble. Several girls were in there when water was thrown at me. I didn't see anyone throw it and I don't know who it was. The particular people I was working with in that department had been pretty nice to me. They were union members and not all of them called me names. I would not say that they did any of these things that I have made note of.

Some individuals feel more strongly about my non-union membership than others. I do not claim any union officers were involved in these things because I don't know. The girls I saw who booed or called me scab were from various parts of the plant. I have never seen, that I can recall, any of the executive board in the group.

Redirect examination.

By Mr. Bruce:

At the time of the water-throwing episode there were other girls I knew in the toilet. I knew them to be union people. After I got the door open after the water-throwing, [fol. 189] I tried every section and all were locked. There were a lot of girls in there and evidently it was quite well known what was to happen because several girls walked in before I did and were waiting when it happened.

(Motion to strike testimony of witness because not tied up with respondent in this case denied.)

CYRIL NICHOLAS NEMMIG, being first duly sworn, testified:

Direct examination.

By Mr. Casper:

I am Cyril Nicholas Nemmig of 2773 North 16th Street. I am an employee of Briggs-Stratton and have been employed there a little over five years. I am a screw machine operator.

On or about November 7, 1945, about the time of the first walkout, I came to work and on the way somebody asked me

if I had walked out and I said no. I had not been in the union before and I did not intend to join now. When I got to work I found my locker lock plugged with paper. I didn't want to break it and I played around with it for quite a while. I had purchased it a short time before. I used the lock only over night and never kept the locker locked during the day. I did not think it necessary as I had no enemies in the plant. I got a hammer and broke the lock. It took about three-quarters of an hour. From that time on I noticed that nobody would talk to me or have anything to do with me. I kept on with my usual work. [fol. 190]

A few days later when I came in in the morning my work clothes were soaked with water so I could not use them. Shortly after another walkout I found my street clothes in my locker were soaked. I had not put the lock on because I figured it was useless.

This work was done on the sly and I have no idea who did it. One of the men on the committee asked me to join the union. I had never known him before and I don't know him now. He said he would like to have me with them and I said that things are going on around here that don't make sense and it doesn't make it worth while that I should join the union. I said when a society was worth while people wanted to join and would not have to be forced. He came to me several times after that and I told him I had thought things over and did not care to join.

Similar incidents continued. One time I found "scab" on the locker stenciled with yellow paint. Another time I found crap in the locker. Just before Christmas I found my leather jacket had been so badly cut it could not be sewed up. A patch had to be put on the left arm and in the back. My tools disappeared. I had kept them in a tool locker used as a bench and that lock was also plugged up with lacquer or something. I opened the locker by taking pins out of the hinges.

[fol. 191] On this particular day of the walkout the tools had disappeared. I was prevented from working through the disappearance of my tools. I went to the straw boss and he gave me no satisfaction. Later Mr. Prange came in and he picked up some odd tolls that I could use. I got along with those the rest of the day but not very well.

About January third a gasoline tank, one of the motor tanks, was placed behind this same locker. Because of

things happening in the regular locker I had put my clothes in the small tool locker. The gas tank was placed behind this locker with an oil line arranged in such a way that oil would drip on my clothes all day. I fortunately had the clothes wrapped in my jacket, but there was so much oil that it went through the leather jacket and it got on my sweater and pants. This tank had not been placed there before and was a make-shift outfit.

Cross-examination.

By Mr. Previant:

My last name is Nemmig. I am related by marriage to an official of Briggs Stratton. I married Elizabeth Peters. Her uncle is Mr. Wideman who is secretary to the president.

The only person connected with the union with whom I have had conversation was this committeeman. I had three conferences with him, I believe. He tried to present to me [fol. 192] all the advantages of unionism. I told him I did not believe in it. He said things would be a lot better for me if I joined. I believe his name is Jack Corbett. He is sitting in the first row back there. I did not say I had never seen him and could not identify him. I said I did not know him personally. I don't remember all the words Mr. Corbett said to me. I remember that he came to me and said he had known of it or had seen me break open the locker and that he knew things would be better for me if I joined the union. He said that the first time he came to see me. I don't know the date. I made no notes.

When he comes to talk to me I am working at the plant. I am there to think of my work and I certainly cannot go remembering everything he is going to tell me. He said on one occasion that if I wanted to join the union I should come and let him know about it. I did not have time so he came to see me. He knew I had nothing to do with him.

I did not see any of the things happen or any of the persons who did these things.

[fol. 193] MARY FRANKULIN, being duly sworn, testified:

Direct examination.

By Mr. Casper:

I am Mrs. Mary Frankulin of 2721 West Meinecke, an employee of Briggs-Stratton Company since November 6, 1945. I operate a punch press.

(Motion to strike all testimony not related to any of the respondents. Denied.)

I received instructions in regard to performing my work from the guy that gave me my job. He was a company representative. There was a foreman over the guy that gave me the job, but this Jim is the one that gave me the job to work on. He told me everything I needed to know about my work.

I worked right away on that machine because I had worked on a punch press 9 years before. An hour after I started they came up and asked how I liked the job. I said: "I like it." About twelve the steward told me they were fighting for a union and I should join. I told him I didn't know about it yet. About 1:30 the steward told me we were walking out. I walked out with them. The girls told me I should go to the meeting at Jefferson Hall and that it would cost me $2.00 for every meeting I didn't attend. I didn't go to the first meeting.

[fol. 194] The next day the girls told me I had made too much money the day before. They said I had made $5.00 in 4½ hours. She said that 96c was the most I should hand in. I said I had handed in already. She said I should tell the timekeeper and that she would fix it up for me.

I told the timekeeper who was sitting in the office with the foreman. The foreman and timekeeper looked at each other and the foreman said: "You tell them to go to hell. There is no limit here on how much you should make or how much you shouldn't."

The timekeeper did not fix it for me. The next day I averaged 1000 an hour at $1.09 per thousand. I could have done better but didn't want to. They told me not to and have been after me right along. I believe I finished the job the following day and took my time piling everything in the truck so I did not make any more.

The first day they told me I should walk up and sit upstairs a few minutes every hour. I thought of what the foreman would think of me if I should sit on the first day and so I was piling in the truck from one place to another just to waste time.

The steward was there when the girl told me 96c was the limit. Her name is Alice.

The day after they were after me I said, "I don't know if I am able to work because my mother takes care of the [fol. 195] kid and I don't know if she will." I gave this reason until November 30 day after day. Then I told the steward I was in the union in a place I had worked before and that I could get a withdraw card there.

About November 30 I got the card for December for one dollar to join the union. Then they really figured out how much I should make. I think I made more before.

Then I went on another job. Every job you went to somebody was after you. On one particular job we never made much and wanted a raise. I worked for 2½ days and average 1500-1600 like they told me. I went to Jim and asked for a raise. I was told to talk to Al. The girls told me to break the machine. She really is the one that goes from the steward to all new girls. She is a member of the union. She told me so. She told me if I would not go to the meeting it would cost me $2 or $10 even when I did join.

Jim told me some other girl made it on the machine. Jim said to wait a few minutes and somebody would time me. Nobody came and after 2 there was a walkout. I went to the employment office and told them I could not make out on this job and the girls say they can't make out either. He called the timekeeper to see how much the girls made on that job. The timekeeper said the girl made an average of 2,000 an hour and that another girl before that 2500 an [fol. 196] hour. They told me at the office if I came in the following day they will time me.

I worked my usual speed while the man timed me. The girls asked me if I wanted a medal from the company. They all yelled at me and were mad and would not talk to me after that. I averaged over 2000.

The girls told me now we won't get a raise. I didn't work on that job long. Something happened to the die.

* * * * * * *

One day I was in the 4th floor cafeteria with some others when I was told a man wanted to see me down stairs. I went down and he asked me how much I made. He had a slip of paper and said I averaged $1.12 an hour. He said I dassent make more than 96c. I told him I was working for Briggs-Stratton. I told Alice and another girl if I could make $1.50 an hour I would do it. I will not listen to anybody.

After this different girls turned their heads away from me and this one girl goes like (indicates spitting). When I work on the machine she faces the other way. That morning she shook her fist at me.

Later I went to the locker room. The girls were there with their coats on. I found cigaret butts and ashes in my boots. I took them to the first floor and showed the foreman. He just shook his head and said he didn't know who did it.

[fol. 197] The girls stayed in the woman's room while I tried to empty the cigaret butts and ashes in the toilet, but there was paste or glue in the inside. I used one roll of toilet paper. I said to the girls that it was low to do something like that. Rose Madauas made faces at me.

I got my black fur coat from my locker and it was covered with sand and ashes. There were two copper wires on my sleeve so I had to take them off before I put it on. I had no lock on my locker then but put one on after that. Twice it has been stuck with gum and had to be broken off.

I have paid no union dues after the first payment.

The man who came and told me how much I should make is Erwin Fleischer.

Cross-examination.

By Mr. Previant:

There are less than thirty in the department where these things happened. Only the new girls are not in the union. I paid my union dues about November 30 for one month.

(Motion denied that testimony be stricken as not material.)

[fol. 198] ELIZABETH SCHULTZ, being duly sworn, testified:

Direct examination.

By Mr. Casper:

I am Mrs. Elizabeth Schultz of 806 East Ottjen. I am an employe of Briggs-Stratton and have been for eighteen years in September. I am an inspector.

I walked out with them the first time but the second time I refused to. The gangs from the Die Casting Department and in our locker room came out there and booed me, and one steward from the Currans department said they should boot me out. They called me scab and rat and said if I would not walk out I would not have a job. While they were booing Mr. Griffith, Mr. Zabel and Mr. Sinclair came in. I and two more girls stayed and these two girls said our clothes would be wrecked. One of the fellows threatened to pull off my glasses and tramp on them. I don't know his name.

I worked one hour that day and the other girls said we had better go before they damage our homes as they threatened. A few days later the steward from the Curran Department said to the bunch of girls, "The next time she stays it will be the last day because we refuse to work with

Redirect examination.

By Mr. Bruce:

[fol. 199] A few days later something was all over the lock on my locker. I showed Mr. Zabel and he said the lock would have to be broken and that they would replace it. I should buy a lock and give him bill. They broke open the lock.

I was a member of the union. I have been walking out since because they threatened to do harm.

Cross-examination.

By Mr. Previant:

I haven't paid union dues last year or this year. These people in my department said I should go out but I have been sick a lot and could not afford to go walking out. Two girls came up and Art Sieckert from the Curran Depart-

ment said I should go out. The Curran Department is for pistons and connecting rods.

Some of the people in that department said they wanted to boot me out. A bunch of them were standing there when Mr. Griffith and Mr. Zabel came down. This was the bunch that called me names.

Art Siekert is in the back row in the courtroom. He is connected with the union but I don't know what he is. He goes around and asks people to join the union and tells the stewards when to walk out. As soon as a new employee comes he is right there to ask him.

[fol. 200] Mr. Previant: For the purpose of the record we will state that up until February 8, 1946, Mr. Siekert held no position with the union but that thereafter he has been a member of the Board.

Mr. Bruce: It is completely improper, I think, to produce testimony by statements of this kind. I am willing to let it stand as I have no doubt Mr. Previant's statement is correct.

ELSIE WUSSOW, being first duly sworn, testified:

Direct examination.

By Mr. Casper:

I am Miss Elsie Wussow of 2672 North 41st Street. I am employed at Briggs-Stratton and have been for 21 years. I am in the Inspection Department.

During November of last year they put gum on my coat because I talked to the girl that didn't walk out the second walkout day. The girl was Elizabeth Schultz who stayed and worked.

My coat was in my locker. The steward is Edna Gallagher and we share our locker on another floor. I told her it wasn't nice for anybody to do that to me. She said she supposed they did it only because I talked to Elizabeth.

I have walked out each walkout because I was told. I am a member of the union. If I could have I would just as soon have worked.

[fol. 201] Cross-examination.

By Mr. Previant:

I went to some union meetings but not every one. I am willing to go along with the majority of the union members if they treat me all right. But it wasn't nice when they put gum on my coat. I don't know who did it.

Redirect examination.

By Mr. Bruce:

I have been leaving the plant because if you stay nobody will like you. They want you to go out.

RALPH BEYER, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I am Ralph Beyer of 2355 North 57th Street and I work for Briggs Stratton. I have worked there since January 1935 and my work is Production planning and control. I am not now a union member. My job no longer requires union membership. I am not really a worker. I was on November 6, 1945 and was then eligible for union membership.

Because my work keeps me busy overtime, I had been unable to attend some regular monthly union meetings. Therefore I did not know on November 6, 1945, of any pro-[fol. 202] posed walkout. At about 1:30 P. M., I notice a flurry around the office. Other workers said something about a strike or walkout. Meanwhile I received a phone call on the company dial phone. An unidentified voice asked if I was coming to the shipping room. I inquired what it was all about and he stated there was to be a walk out and a meeting at Jefferson Hall. I asked the reason and he said, "You have a wife and child, haven't you." At this point he hung up and I reported the incident to my boss, Gordon Bell. After this I attended the meetings regularly.

Cross-examination.

By Mr. Previant:

I do not know who was on the phone. I have a wife and child.

HARVEY KLAUSER, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I am Harvey Klauser of 5256 North Bell Isle Drive. I am married and have two children. I have been employed for eleven years by Briggs-Stratton as a paint sprayer. I am not a union member.

I have made notes while sitting back there. The first incident which affected me while working at the plant occurred about December 7th. I went out for dinner and when [fol. 203] I returned on the job my apron had disappeared. I found it on the side of the booth mixed with water and paint. I reported this to Mr. Dorsey, Supt. of the West Plant. He asked me who did it and I didn't know. He said we'd just have to let it go.

My gloves which are furnished by the company disappeared several times. I would leave my work to punch the time clock or go to the men's room and they would disappear. I use these gloves on my job. I found them in the spray tank roughly about eight or nine times. This happened over a period of weeks around December 17.

During the week of December 17th at quitting time I went to get my overcoat which was hanging near my place of work. The back, arm and pocket were saturated with oil and graphite. It could be cleaned but the marks will be there for the life of the coat. I had it cleaned.

I walked out the first two or three times but thereafter I stayed in the plant during walkouts. The incidents I have mentioned started after I failed to participate in the walk outs.

Around the week of January 8th I found my left front and rear tires punctured. They had been punctured with an ice pick or other sharp instrument.

On January 14th, my bowling night, I stopped at a place and the wife had called that I should come home immediately as someone had thrown a brick through a window. I went [fol. 204] home and a big part of a cement block was lying on the kitchen floor and both the kitchen and storm windows were broken.

Exhibit 8, a piece of cement block, admitted in evidence.

Around January 21st I went down to punch my time card and to the men's room. My turntable was missing on my return to my work. I use this to set my motor on to spray before I set it on the truck. Without it I cannot work. We have no extra ones. I looked for Mr. Dorsey but didn't find him. I saw two supervision men who told me to punch my card. I said the turntable was probably in my water tank. I drained the tank and found it. I heard the supervisory men say if they saw or knew of anyone doing this again they should punch their card. So I went down to punch my card the second time and when I returned, the turntable was gone again. It was again in the water tank. Since that time the turntable has not been tampered with. It takes about 7/10th of an hour for draining and refilling. I lost better than an hour that day.

I have been requested from time to time during this period to join the union. I used to go out to dinner with a fellow and he kept telling me I'd better get in or it was going to be hard on me. One day in the plant Walter Berger, I think he is the steward at present, said I'd better get in. He said they would have a closed shop and that I [fol. 205] would be out. I think he is the last party that talked to me.

Cross-examination.

By Mr. Previant:

The fellow I went out to dinner with in October was Henry Lowe. He is another worker in the plant but not an officer in the union.

I have had quarrels with other sprayers in our department. I was satisfied with the work; the quarrels were about minor matters.

I am also a musician and often play at our bowling party at the Milwaukee Athletic Club. I have had no trouble with the musicians union. I am not a member. I have never

been approached about membership. I talked to several people about the musicians local but no representative has approached me. I have spoken to members of the musicians union. They did not say I should join but only asked why I did not. I don't need their job.

I had odd jobs before I came to Briggs-Stratton.

Fred F. Zabel, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I am Fred F. Zabel of 2633 North 84th, Wauwatosa. I am Plant Superintendent of Briggs-Stratton East Plant. I [fol. 206] have been employed as such for five years and have been with the company for thirty-two years.

I have heard the testimony this morning. Some of the persons who testified have been under my supervision. These instances that have occurred have been reported to me or came to my attention. I have seen the gummed locks and damaged clothing, etc. I have other incidents reported to me of the same character.

I overheard a conversation between Frank Slowik and this union steward of Slowik's department about February 15. Slowik was a production employe who started that day. The steward was Richard Havis. A walkout occurred that day at two o'clock.

I had no knowledge of the walkout until about five minutes to two. There was a little confusion near the press room and I asked the foreman what the trouble was. He told me there was to be a walkout at two o'clock. I walked through the department calling the attention of the foreman to keep the men working until two. I told the steward the same thing.

Just about two, Slowik approached the foreman to whom I was talking and asked if he had to go out. The steward, Richard Havis, stood within three feet of us and heard what was said. The foreman and I said, "Go back to work, we are not sending you home." The steward overheard and shaking his finger like this (indicating) "You better [fol. 207] not, we will fix you if you do." He shook his finger as if waving it in his face.

Slowik told the foreman and myself that he had just left a place where there was labor trouble and that he wanted to work. Havis and the others had left by then as it was two o'clock.

I don't know if Slowik was a union member.

On one occasion in January I found the tools of one employe immersed in a wash tank. The employe was Paul Rosenthal who works in the tool room. The tool box was set on end in a cleaner tank of stanisol. Rosenthal did not call this to my attention but I happened to be in the tool room a little later and saw it. This was on January 7.

In addition to the above there were other incidents reported to me that I did not see. I witnessed the incident that Mrs. Schultz testified to.

Cross-examination.

By Mr. Previant:

The stanisol incident occurred on Monday morning when the men reported to work. I presume this happened between Friday night at the close of work and Monday morning. Work in the tool room starts at 8 A. M. on Monday mornings; the Die Casting Department starts at 7 A. M. Only top personnel were working on Saturday; there were no production workers.

[fol. 208] Raymond W. Griffith, being duly sworn, testified:

Redirect examination.

By Mr. Bruce:

Witness Nemmig made some reference to a relationship by marriage to one Mr. Wiedeman. Mr. Wiedeman is secretary to the president but is not an officer nor a director of the company.

ANTHONY DORIA, being duly sworn, testified as follows:

Redirect examination.

By Mr. Bruce:

Exhibit 9 is a copy of the Constitution of the International. This is accurate with the exception of possible typographical or grammatical changes which have been authorized. It has been the same since November 1945.

(Exhibit 9 received.)

The articles provide that the secretary-treasurer, my office, is also a member of the International Executive Board. Article 17 is devoted to the subject of strikes. A vote was taken among employes of Local 232 on the subject of a strike on several occasions. I don't recall the dates but one vote was taken in the Bohemian Hall, and subsequently a secret ballot was taken at Jefferson Hall. That was done pursuant to the old constitution. I don't know [fol. 209] anything about whether prior notice of the vote, etc. was given. The meeting I attended at the Bohemian Hall voted by standing. There was a unanimous membership vote against a closed ballot. The second strike vote was taken immediately after our last case before this board and was held on the allegations of the company in their complaint in order to bring about compliance. At one meeting the results of a secret strike vote was 1172 to 7 in favor. I can determine the exact date from the minutes of our meeting. It was at 2:30 P. M., February 15.

There was no notice of the strike vote. Membership of this union have constantly been advised that at every meeting the issues of whether the work stoppages would continue would be up. The secret vote referred to above was this question.

There was no form to the secret ballot. We requested the people to write "yes" or "no" on a blank piece of paper. The question submitted to them was (reading): "Brothers Gen. Schmidt and Arthur Seegert moved that Local 232 in special meeting hereby authorizes the adoption and continuance of special meetings at any time, in order to effectively counteract the anti-union activities of the company." "Before taking the vote the chairman stated that the vote of "yes" will mean you are in favor of the motion and a vote of "no" means you are against the motion."

[fol. 210] After that the ballots were collected by tellers within the meeting. Not to have any question raised as to the balloting, we requested the entire membership to act as witnesses to the tallying and the ballots were tallied before the entire membership. All the ballots used are now in possession of the local union.

Exhibit 10 is a copy of the by-laws of the local. Since our constitution has been amended the local union is in the process of bringing them in conformity with the constitution. These generally are the by laws that were in effect at the local union.

There was no other vote taken in connection with the strike that I know of. I cannot testify with respect to meetings which I did not attend. To the best of my knowledge there have been no other votes taken.

(Exhibit 10 received.)

Redirect examination.

By Mr. Previant:

Exhibit 11 is the minutes of the meeting at Bohemian Hall where the initial action took place.

[fol. 211] Raymond Kress, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I am Raymond Kress, employed by Briggs-Stratton. I work the third shift from eleven to seven. I worked Friday night, March 8, and Saturday night, March 9. I started at 11 P. M., Friday night, and worked until seven A. M., Saturday, and from eleven Saturday night until seven, Sunday morning. I squawked about my pay as I was under the impression that time and a half would be paid all day Saturday and Sunday would be double time. Although I worked seven hours Saturday, I only received time and a half Saturday night for working seven hours Sunday. I received nothing extra for Saturday night. I raised the question with Joe Doyle, head timekeeper at West Plant. When I told him I was short on my check according to the

union contract and the company, he told me right out that there was no contract. If I came in Sunday, then I would get double time, otherwise not. He told me there was no contract.

Cross-examination.

By Mr. Bruce:

Joe Doyle is head timekeeper at West Plant. I have worked that shift since I started at Briggs-Stratton on [fol. 212] February 13. I have worked the same hours throughout February and have been paid the same. I received time and a half Saturday night that ran into Sunday. For the shift that ran into Sunday morning I was paid time and a half for the entire time worked.

I start no shift on Sunday. Mr. Doyle just told me the only time they pay time and a half is if you come in Saturday evening and work on Sunday morning. If I came in on Sunday night and worked Monday, I would be paid double. He said that was the way they always paid.

Arthur Koenig, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I live at 3443 North Third Street and work for Ziemer's Sausage Company. I sought employment with Briggs-Stratton after my discharge from the army on September 17, 1945. I was employed on October 15th as Stock chaser.

I am married and my wife is a nurse in the same department. I was approached to join the union shortly after I was employed. I was told that there was a waiting period before I joined the union. I was later told I had better join or words to that effect. I was approached at least five or six times over a short period of time. The discussion was [fol. 213] always the same. It would help the union if I was to join and that they tried to help returning veterans more than anything else. I never said I would or that I wouldn't join.

I worked one Saturday morning about two weeks ago and the following Monday I was called a scab throughout

the shop. This was on just one day. I quit the job on January 7th. One morning shortly after I started to work one fellow told me I had better join if I knew what was good for me. He said to walk on the third floor and I would find out why. He said see what was happening to one of the fellows I knew up there. I did not go up. Shortly after a whole group came around and asked me to join. I told them I would rather quit and would be better off. One of the group grabbed my arm and asked me to join. I did not want to be coerced. I quit. I told the superintendent I was quitting and punched out. He urged me to return but I have not gone back.

During the time I was there a number of walkouts occurred. I was not told in so many words to go out, but I did when they called me a scab. I generally walked out when they did.

Cross-examination.

By Mr. Previant:

I can identify the man who held my arm but I don't think he is in the courtroom. I don't know his name. I could not say if he is an officer of the union. I don't think he was.

[fol. 214] I can identify Mr. Corbett here in the courtroom who spoke to me about joining the union. I spoke to him on several occasions but I do not recall the exact time or anything like that. He never grabbed my arm or threatened me with violence. He conducted himself in a gentlemanly manner whenever he spoke to me.

Redirect examination.

By Mr. Bruce:

My friend on the third floor was Harvey Klanser.

Frank K. Slowik, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I live at 4051 North 16th Street and am employed at Briggs-Stratton. I started about a month ago—around February 16th. Prior to then I worked for International

Harvester. During the war I had training through the War Manpower Commission. I have a card in connection with such training.

Exhibit 14 is a certificate which I obtained from the War Manpower Commission certifying my training. It contains my number and recites that I completed the training within industry and have pledged to apply principles of good union shop relations in my daily work.

[fol. 215] The day I started at Briggs Stratton everybody was going out. The superintendent said he was not telling me what to do but that he wanted me to work. The Steward said, "Well, Frank, you belong to the union?" I said, "yes." "If you belong to the union, you know what's good for you," so I picked up and went out with the bunch.

I don't know the man's name.

My understanding of the card which says, "is pledged to good union job relations in his daily work" means going off the job like this I think going off the job like this is unfair to the company and wrong. If you belong to the union you should play square and should not go to work and spoil everything. I really object to walking out.

I wanted to stay on the job but I went with the majority because of what the steward said. I have attended all meetings they had. I want to be a good union member.

Cross-examination.

By Mr. Previant:

I attended the meeting that day and ever since. At that meeting a secret ballot was conducted as to whether or no the employes wanted to continue that practice. I remember the results that nearly 99% favored going out. I would be opposed to strikes or work stoppages when agreed to by [fol. 216] a majority of the employees. I do not favor that stuff at all.

I know nothing of past relationship between company and union before I started work on February 15. I did not find out at the meetings.

CLIFFORD MATCHEY, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I live at 3743-A, North 38th Street. I am Regional Representative UAW-AFL. I have had this job since March 4th. Before that I was Financial Secretary of Local 232, UAW-AFL. I was the only full-time employe of that union and with the help of the Executive Board, had charge of its office and affairs.

I was employed by Briggs-Stratton from August 15, 1926 or 1927 until I obtained a leave of absence to work for the union on January 6, 1941. During such time I worked regularly as a production worker. Prior to 1941 I was active in union affairs and was one of the original organizers.

Mr. Griffith and I discussed the status of the union quite frequently both on the phone and in person. I recall the conversation wherein the union made charges of the company [fol. 217] tolerating or letting non-union people undermine the union during working hours. I believe Mr. Griffith denied it at first and said, "well, what could I do about it?" If that was the position of the company we would no longer live up to our agreement—it could not be a one way street. This conversation was four months prior to the first work stoppages.

I never agreed with any company official that there was a contract in existence. We never gave this question a direct answer. We never agreed directly to continue the 1944 agreement.

Not until very recently were we charged with violating the 1944 agreement by the stoppages. The only discussion we had would be since the Wisconsin State Labor Board has come into the picture.

A bone of contention between company and union down through the years is that the earnings on specific jobs were too high. Even prior to the union there was a sort of unwritten code which was more in effect than since the union. I have in mind the case of Alice Erdman against John Curran department. The union brought charges that she was not allowed to work Saturday because she was a union steward. Mr. Curran made the statement that she made too much money during the week to be allowed to work for

time and a half on Saturday. Mr. Curran is foreman of the department.

[fol. 218] Anyone with knowledge of piece work or piece workers knows that the fear of the workers is that if they produce more than what is considered a fair day's work, the company time-study men will try to make some change on the job to allow the job to be cut and the only benefit to the worker is to work harder for less money. I would say the union at Briggs-Stratton has increased piece work production because the workers felt they had a chance to defend themselves against wage cuts.

Since the union has represented plant employes, no limitations upon the amount of piece work of any employe has been embodied by any official action or otherwise by the union. I might say that we have cautioned departments where there have been arguments about this that they must not and should not do so. There has been controversy from time to time with respect to certain rates. There are bound to be cases where the work has been slowed down by employes where you are dealing with a great many production workers. The workers will charge that the rate is unfair and the company charges that the people are not working to the fullest possible extent. The union and company have from time to time made adjustments. On one occasion the company made the rate higher and the union subsequently found it had acted on false information presented to them [fol. 219] by the employe and entered into an agreement with the company to correct the situation. We have from time to time asked the company to go into the rate structure, but we have never had too much cooperation on that score.

I have heard of timecards returned to employes with the notation "too high" but have not seen the cards. The union has not directed, requested, or suggested acts of personal violence or damage to property or to any employe of Briggs-Stratton. Not only have we not done this, but we have asked them that they do nothing to jeopardize the union position. I have heard some of the things testified to today by hearsay. As far as I know these incidents have not been officially called to the attention of the union officers. No corporation official has called this to our attention to my knowledge or asked that something be done about this. We have tried to find out who was responsible for these acts but were not successful. These acts are not a part of our bargaining program for Briggs-Stratton.

I have attended meetings at which Mr. Doria spoke in the last six months. He has repeatedly cautioned all members against engaging in individual activities as contrasted with the concerted activities of the union.

The company charged at times during the war years that the union was limiting production. I have always asked for [fol. 220] proof and we have also cited the case of Mr. Curran. I believe at one time the company stated flatly that the union alone was responsible for the curtailment of production in various departments. We were willing to show them where, after we organized the departments, we held to a certain specific amount day in and day out, that the people had stepped up their production by being assured that they would be given a fair play, and where, if there were any cuts that were unjustified, it would be taken care of.

I know what is meant by the expression "cheating" with respect to piece rates. There are as many ways of cheating as there are piece rates. The most prevalent one is where there are bad and good jobs in a department and where with the cooperation of the foreman an employe will work on what we call a "loose rate" and run ahead and then not punch out and go on the bad rate and not punch in on the bad rate until he used up the time and therefore it does not show the bad rate in the light it should be pictured. By taking advantage of the good rate and make it apply to the bad rate the bad rate looks good. The union has called such practices to the company attention repeatedly and asked them to work out a program. The conditions have come about due to the fact that when we have complained about various rates in various departments, the company would always bring out a record where certain individuals were [fol. 221] able to make out on a bad rate through cheating. This cheating reacts to the detriment of those regularly on the bad job because they are expected to keep up the rate of the good job which was involved in the cheating.

Cross-examination.

By Mr. Bruce:

Erwin Fleischer is a trustee of Local 232. He is an officer at the present time and was elected last November.

From what I know, Erwin Fleischer was sent to the department where Mary Frankulin worked to find how it was possible for one individual to make so much money when

the other girls reported it could not be done. We talked it over and I asked him to check and see if the earnings were honest. I was not present. It was no concern of mine what she was earning except we wished to know whether that was the number of pieces turned in or whether there was collusion that would enable her to make that much money on a job that other girls could not make out on. I don't believe he had or did tell her about the limit on her earnings. When he returned he said he had checked on the job and talked to the girl. That much he told me. He didn't tell me what the conversation was. We were interested in whether the earnings were honest.

[fol. 222] With the exception of the time when we tried to get the company to do something about undermining the union, I had no discussion with Mr. Griffith which was concerned with whether the old contract was in effect. It was my contention during this conversation that they were undermining the union. He stated what he could do about it and I answered that in that case there was no contract.

I would say that for a time it was my impression that the terms and conditions of the contract were continued on since July, but certainly not since the War Labor Board directive has come out. We have dealt and handled each grievance on its merits. We can show where we have many grievances whereby we are asking the company to settle on what we proposed on seniority and also on transfers rather than what had been practiced before. I believe each grievance was handled on its merits and believe we were instructed by the panel chairman of the War Labor Board to abide by the rules we did. I have sat in on hearings with respect to grievances since July 1944. Sometimes the procedure followed that set up in the 1942 contract, sometimes not. The company has never followed grievance procedure according to any set pattern at any time. I believe the company has alluded to the printed contract to see how the grievance should be settled. I don't believe we have very much be-

[fol. 223] cause we wanted to put in a new method of handling grievances as soon as possible.

I was present at the War Labor Board panel hearing and remember that Mr. Griffith mentioned the old agreement. I do not remember whether he said the parties were operating under the terms of the expired contract. I believe I told Mr. Griffith specifically when we had this controversy about undermining the union that we were no longer operating

under the terms of the contract. The controversy involved the case of a supervisor on the fifth floor telling people not to join the union nor to pay the union any attention. It was called to the attention of Mr. Griffith at this time that the union was not operating under the old contract. It is based on that conversation and on the fact that the company has not at any time since the directive came out, recognized the directive or any ruling of the War Labor Board.

The company has been following the seniority provision of the contract in connection with layoffs and transfers and so on. I do not believe there have been many lay-offs with the exception of a short period of time. The company has from time to time reported to me changes in rates as called for in the contract. We have had to check them on it a few times, they would sort of forget about it and upon being reminded, they would send in a new list.

[fol. 224] I believe I called Mr. Klauser on Saturday morning and asked why he did not come into the union. I believe there was some pressure put on him or people tried to scare him into joining the union. I said he was bound to experience pressure. I told him, I believe, "If you are a Judas you cannot expect to be loved by the people you are working against." The last word I had was he would think it over and let me know. I would not know if it was within a day or two that the brick went through his window. I don't know what night the brick went through the window. I think the first knowledge I had of the case was when Mr. Zabel called Mr. Jacobsen in his office and Herb told me that noon. I don't know the date. I don't know who threw the brick through the window.

ERWIN FLEISCHER, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I work in the Tool Room of Briggs-Stratton. I have worked for the company for eleven years. I am married but have no family.

I heard Mrs. Frankulin testify as to a conversation she claims to have had with me. I recall a conversation with her about six weeks ago. A report came in of the girls which [fol. 225] stated that *Miss* Frankulin made an excessive

amount of money where the others could make 76c. I was told to investigate as to whether cheating was done because people have a habit of taking a tight job and not punching out or run a good job and punch out ahead and in that way equalize the pay. I am talking about the practice that is prevalent throughout the shop. The result of such practice is you once get hooked on a tight job and you get a low salary of 40c per hour.

I went to the department and asked one of the girls to get May. She came down and I said some girls tell me they can only make 96c and you are making. . . . She interrupted to state that she was only making a dollar. I said the report was that she made $1.12. She answered that she was now. I asked if she was doing this honestly. She answered "None of your . . . business and started swearing." She continued: "I do not work for the union, I work for Briggs-Stratton, and if them . . . girls want my job they can have it . . ." I saw what character she was and I was all through. I just said, "Listen, May, I don't want any of these piece work rates cut due to cheating. It is all right if you make it honest, but if you are cheating, I want to know it. I have had no other conversation with her at any time. I had never seen her before.

[fol. 226] Cross-examination.

By Mr. Bruce:

I am on the Board of Trustees and have been for a year and a half.

About 98% of production employes belong to the union.

The advantage of the practice of cheating I have referred to is to the foremen who try to hide their face from management and are afraid to get into trouble when they see a low rate. They let people work on the day rate and then put them on piece work rate which brings up the piece work rate. Sometimes this is done by union members too, if it is a high rate and they know they are going on a bum rate, use the high rate on the bum rate. We spoke to management to try to get the high rates and low rates adjusted, but management took no effect. A union member benefits if he gets a loose job he would not hand it in and would equalize it on a low, bad job, or the rate would be different. In other words, when, if he gets a "loose" job, he turns in more time on that job than he actually took to

make the pieces and carries over some of that time to the so-called "tighter" job, and that has happened with sufficient frequency that the union has been checking up.

The report was that Mary Frankulin was making more than other girls on that particular job. I was interested to [fol. 227] find out why. I was in her department and had her called. I did not tell her my name but I did tell her why I was there. I asked her how she was making $1.12 and she flew off the handle. I only had an interview with her for a few minutes and when I saw what character she was. I didn't care how much she was making, only whether she made it honestly. That is the thing I went to see her about and that was all I could ask her. I implied to her at the start that I thought she was cheating. We don't want any cheating.

I don't know when she joined the union. I visited her about November 30th, six weeks ago. I don't know if union representatives kept a penciled notation of what she was making after this conversation.

The report came to me when one of the union employes came to the office. They had checked up on her I guess. The union preferred that these "loose" jobs be not combined to make it a tight job.

JOHN H. CORBETT, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I live at 2438 N. 38th Street and am employed at Briggs-Stratton West Plant. I have been president of Local 232, [fol. 228] since February 8th. Prior to that I was Guide, also an officer of the union.

I heard Mr. Nemmig testify that I had approached him about joining the union. When I first approached Mr. Nemmig we talked about the advantages of belonging. He talked about the disadvantages and he even told me to read the Milwaukee Labor News. There was an article there which he thought would do me good. Other than that I have never threatened him and have talked to him and conducted myself in a gentlemanly manner. I have never told him what might happen if he did not join. All I ever told him

was if he was in the union it would be better for him and everybody else. I did not say things would stop because I did not know what was going on around the shop.

Cross-examination.

By Mr. Bruce:

I think it was at our third meeting that I asked Mr. Nemmig if he had thought it over and he said, the way things had been happening to him he thought his answer would be "no." I never bothered him again. I really would not know if I said "it would be a lot better for you if you joined the union," but I never threatened a man.

[fol. 229] CLARENCE EHRMAN, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I live at 1315 West Wright and am on leave of absence from Briggs-Stratton. I first started there in 1918 and took leave of absence March 1, 1946. I was elected Financial Secretary of Local 232, replacing Mr. Matchey. This is a full-time job. Prior to March 1, I was president of the local union. Mr. Corbett has taken my job.

I am familiar with the work stoppage on January 7. Shortly after I started Harvey Klauser bumped one of the union boys off his job. He had been on his work for three weeks and had done a very good job. The boys in the department saw this and all threw down their tools and walked around the spray booth. The boys said they would not work as long as this scab was going to. I told them to return to their job and contacted the foreman of the department and told him what had happened. He called Mr. Griffith or Mr. Dorsey on the phone and told me Mr. Dorsey was on the way and that I should try to persuade the boys to go back to work. They refused to do so. This stoppage was not discussed at any union meeting and I had no prior knowledge [fol. 230] of it. I did what I could to get them to work but was not successful.

Cross-examination.

By Mr. Bruce:

This occurred at West Plant. Klauser worked in the Assembly department. This was his first day after being away sick for several weeks. He returned to the job he had previous occupied. He took a union member off the job.

Right after this stoppage another one occurred in the Test Department. A few individual stock chasers stopped that day in the production department. I would not know the exact number who stopped work in the various departments that morning but quite a few.

I don't know why persons stopped work at East Plant this same day. I do know this: The superintendent of the plant and individual foremen in the department made statements prior to this before Klauser took sick that if he came in again in the condition he did, he would be taken off the job. I did not hear people call him a scab that morning. I don't know which day the brick was thrown.

Redirect examination.

By Mr. Previant:

My reference to Mr. Klauser's condition meant that he used to come in late and intoxicated.

[fol. 231] Herbert Jacobsen, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I live at 4563 North 28th and am employed as Gauge maker in the Tool Room of Briggs-Stratton. I have worked there for about twelve years. I hold no position with any labor union at the present time but was Recording Secretary prior to March 1. I am familiar with a work stoppage of January 7, 1946 at East Plant.

I had no advance knowledge of the stoppage. I have no knowledge that the union directed or planned it. I had just punched in my card and was alone at the time clock when Paul Rosenthal, another employe in the Tool Room

started cursing me. He accused me of throwing his tool box in the oil tank. He said he didn't know when it was thrown in, but that I was president of the union and had done it. I had not previously known of it. I was upset because he had just broke his leg and was out of work for four or five months. Although the names he had called me called for a fight, I swallowed it but did tell some of the boys what had happened. I had had nothing to do with the matter so why should I take that from him.

[fol. 232] During the ten o'clock lunch period, after the men had called the matter to the attention of the superintendent, Paul was called by the superintendent. Paul had left his machine and gone to the other end of the Tool Room. He repeated before the eighty employees of the Tool Room what he had called me by the time clock. The men refused to go back to work until there was some kind of a show down as they did not like to work with a man of that nature. The superintendent, foreman, myself and the steward told the men to return to work but they refused. Mr. Coughlin, the president, finally arrived around twenty after eleven. He was less interested in our complaint than lecturing us on union activities. • • •

We did not return to work but asked for a meeting of the Executive Board and management after lunch. I think the meeting was held at 3:30 P. M. The shift quit at five o'clock but the men did not work that day. The adjustment was made that the company would protect these people at all times. The man wasn't even asked to apologize for what he had said to me.

I returned to work the next day.

(Stipulation that witness holds a card similar to Exhibit 14.)

Three men hold these cards in our local. I was an instructor in that industry program and every member that carries a card is entitled to be an instructor to further this training.

[fol. 233] The actions of the union do not violate the pledge on this certificate.

I typed Exhibit 11 myself. It is the Minutes of the special meeting of Saturday, November 3 at Bohemian Hall. I was present and took the minutes of that meeting in abbreviated long hand and later typed them. I destroyed the

pencil copy. I typed my name on the last page which is wrong practice.

Exhibit 12 is also minutes. These are of a special meeting held February 15th at Jefferson Hall taken and typed the same as Exhibit 11.

Exhibit 13 is the record of balloting of the tellers to determine whether the members are willing to go along with this program of holding special meeting. Each sheet is marked with the names of the tellers who took care of the particular votes.

Chairman Gooding: The action the union took at this meeting with respect to these work stoppages will be received to establish the action which the union took with reference to these work stoppages.

. . . . . .

Chairman Gooding: We have ruled on the objection to the receipt of Exhibits 11 and 12. They will be received solely for the purpose of establishing what went on at the meeting and not for the purpose of establishing the truth or falsity of the charges in any of the speeches reported.

[fol. 234] (Exhibit 13 received.)

HERBERT JACOBSEN testified further:

Cross-examination.

By Mr. Bruce:

I wasn't aware of what went on at West Plant the morning of January 7th. I had heard nothing about the Klauser incident. I don't know who threw Rosenthal's tools in the wash tank. I don't know the case at East Plant where the Die Casting room men refused to work. I don't know why 309 persons didn't work at West Plant.

I think the company should use all proper means to protect the rights of all employes. My question to MR. COUGHLIN was whether they made a special effort to protect non-union people. He answered "yes", very definitely. He was very mad when he said it and realizing what he said, he changed it.

GENE SCHMIDT, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I live at 4004 West Hope Ave. and am employed at Briggs-Stratton. I have worked there since February 1944. I have seen cards that set forth the days and earnings which [fol. 235] have been marked by the company. Five were sent back to the department I worked in last night. On certain operations the cards had a red ring around them marked "high" denoting they were earning too much per hour on that particular operation. I saw corrections on such cards. One specific card was changed. The number of pieces changed from 170 to 150 pieces. I happened to be standing there when the change was made by the set-up man in the department who acts as supervisor. The cards were brought over by the foreman and sent down from the timekeeping office. They went back there after being corrected. I have seen that many times before.

ANTHONY DORIA testified further:

Redirect examination.

By Mr. Previant:

I was at the special meeting of January 8, 1946. I was informed of the work stoppages sometime during the previous day. We had a meeting as I recall, the afternoon of that day with Mr. Coughlin since Mr. Griffith wasn't at work. That was my first knowledge that these stoppages had occurred on the 8th.

I attended this meeting of the 8th for a specific purpose. I definitely advised the membership, relative to this work stoppage, not to engage in any kind of stoppage or work [fol. 236] interruption that might have any degree of illegality connected with it—that it might jeopardize our program of work stoppage.

I said "You people have been advised repeatedly by me that our program is something upon which no judicial decision has been made. We don't want to jeopardize this program which we think is absolutely legal. Your act of

yesterday may be one that may be construed illegal and connected with this program—it may bring a tinge of illegality to the program we are engaging in." I told them we did not expect any individual or group to carry on pressure by themselves and that any acts to be taken would be taken in conjunction with the approval of the entire membership, and that no individual or group should take it into his own hands to decide what kind of pressure should be exercised against the company or persons because of feelings existing between them. Many other things were discussed at the meeting.

Recross-examination.

By Mr. Bruce:

One of the purposes of my talk was to tell the membership not to do anything to jeopardize the plan described yesterday of interfering with production.

[fol. 237] Oliver L. Dostaler, being duly sworn, testified:

Direct examination.

By Mr. Previant:

I live at 2455 North 32d Street and am employed at the West Plant of Briggs-Stratton. I have been employed there for 19 years. I am presently Recording Secretary of Local 232.

Exhibit 15 was written by myself and is the minutes of an Executive Board Meeting of today, March 27. The meeting was held here in the court house and the entire Executive Board was present. Motion was made, seconded, and unanimously carried:

Mr. Previant: (Reading from minutes) "The Executive Board of Local 232 met in special session * * * for the purpose of * * * clarifying the fact that no contract exists between local 232 AFL and the Briggs-Stratton Corporation. * * * While we deny that there is any contract in existence between Local 232 and Briggs-Stratton Corporation other than individual items during recent contract negotiations, we hereby declare as terminated any contract

which the company or any other person • • • may believe or find to have been in effect since July first, 1944 except those individual items agreed on during the current negotiations • • • "

[fol. 238] Cross-examination.

By Mr. Bruce:

There is no doubt in my mind but the motion was adopted. I have been Recording Secretary since March 8. Prior to such time I was Vice-President. No motion was adopted since I was secretary of this type.

This meeting was held this noon at the court house. All of the Executive Committee were present, Mr. Doria, Mr. Matchey. Mr. Previant does not belong to the Executive Board and was not there when the motion was made. We did not discuss this subject with Mr. Previant during the noon hour. I believe Mr. Doria told me we should meet after we adjourned this morning. We never have taken, as far as I know, any official action on whether there was a contract or not up to this time, that is the Executive Board, and this motion was made by Brother Matchey and seconded by Brother Doria and the rest of us thought the motion okay and voted for it.

The word "agency" in the motion might mean the company or any other person or agency. No one said it might be the Wisconsin Employment Relations Board. The Board was not mentioned. To the best of my knowledge, this is the first information the company has had of the adoption of this motion.

[fol. 239] "Except those individual terms agreed on during the current negotiations", refers to items in our contract which were specifically mentioned such as vacation pay, a change of wages in the percentage added on the regular pay, etc. which the company and union have agreed on in the current negotiations. The vacation plan presently in effect is different from the vacation plan in the last printed contract and was agreed upon some months ago. The company has taken the position that they would not sign a contract until all provisions were agreed upon. My reference was not to items which have been agreed upon, but to those which have been put into effect.

I copied the motion as Brother Matchey made it. The preliminary portion of the minutes prior to the motion was dictated by Brother Doria.

Mr. Previant: As Recording Secretary you will advise the company of the action taken.

A. I will advise them.

Exhibit 15, the whole minutes, received in evidence.

RAYMOND GRIFFITH testified further:

Redirect examination.

By Mr. Bruce:

No notice or letter was received by the company in writing from the union at any time with respect to modification, [fol. 240] change or termination of the contract.

(Objection of Mr. Previant overruled.)

JOSEPH DOYLE, being duly sworn, testified:

Direct examination.

By Mr. Bruce:

I live at 4661 North 29th and am employed as timekeeper at Briggs-Stratton West Plant. I have been so employed since 1928. I don't recall Mr. Kress or the incident testified to by him. I get so many complaints that I don't recall his nor that he stated that there was no contract. We have employes coming in daily with complaints on Saturday pay and I tell them the company routine policy. It is time and a half for work on Saturday and double time on Sunday; and time and a half for work in excess of 8 hours per day. The practice of the company for years has been classify the shift starting Saturday night and ending Sunday morning as a Saturday shift and to pay it as such, etc. There has been no change in this practice for years.

I don't recall saying there was no contract to inquiring employes. In referring to the contract, I may have said

"What contract?" I have told employes that the policy is in agreement with the old contract. No one in management has told me there was no contract. I have nothing to do with the making of a contract.

[fol. 241] RAYMOND GRIFFITH testified further:

Recross-examination.

By Mr. Previant:

I recall that the company submitted a proposed agreement to the union for the term starting July 1, 1944 which was identical to the expired contract. This was submitted in June or July of 1944.

EXHIBIT 1 (Agreement dated September 12, 1942 between Briggs & Stratton and Local 232, and the International Union, U. A. W. of A., affiliated with the A. F. L.) (Not printed).

EXHIBIT 2 (Schedule showing number of employees who worked or walked out, and hours worked during walkout) (Not printed).

EXHIBIT 3 (Report dated March 25, 1946, on sitdown demonstration of January 7, 1946 by Briggs & Stratton) (Not printed).

EXHIBIT 4 (Notice by Briggs & Stratton of 6-day work week, dated November 14, 1945) (Not printed).

EXHIBIT 5 (Schedule of hours of pay and work lost from November 6, 1945 through March 23, 1946 by Briggs & Stratton hourly paid employees because of walkouts and refusal to work) (Not printed).

[fol. 242] EXHIBIT 6 (Milwaukee Journal news article by Samuel N. Sherman entitled "Work Time Meetings New Labor Weapon") (Omitting formal parts).

Spokesmen for the AFL United Automobile Workers international union, after weeks of silence, conceded Saturday that the series of meetings which employes of the Briggs-Stratton Corp. plants have been leaving work to attend are actually a new type labor weapon designed to replace the strike.

Eleven times now since last Nov. 7 the day shifts at the plant have left their jobs to attend the meetings called suddenly without advance notice to the plant management.

"If you called this a new form of strike you would be making a bad mistake," Anthony Doria, international secretary-treasurer of the union here, said Saturday. "It's a labor weapon actually designed to avoid a strike and the hardships which a strike imposes on the workers. We think it's a better weapon than a strike."

Only Cost Is Deductions

According to Doria the new method has several distinct advantages. First it keeps the worker on the payroll, except for the deductions which the company takes for those few hours a week during which he leaves the job to attend the meetings.

[fol. 243] "Men who have been obliged to walk the picket lines for months with no pay checks coming in to feed themselves and their families know one of the worst features of a strike," Doria said.

Secondly, according to Doria, the meetings serve the union's purpose of preventing "company inspired" rumors from wrecking the group's solidarity.

"Defense Against Rumors"

"We analyzed the picture very thoroughly before we arrived at this idea," Doria said, "and the one thing which stood out was the ease with which a group of workers could be split by well timed rumors, usually started in the proper places by some of the supervisory help."

If the rumors did not do it, according to Doria, some proposition for settlement which the company might pass on directly to the workers often did the trick.

Under these circumstances, according to Doria, one of two things happened. The workers either fell in line with an offer or else "became so incensed by company tactics" that they would walk out without authorization and the strike was on.

"Under the new method," Doria explained, "meetings are called for any one or more of three possible reasons—any new development in negotiations which might arise with respect to neutral labor boards, any development in

[fol. 244] direct negotiations with management and finally, any time the leaderships feels management has started a rumor detrimental to the union's security."

Assures Large Attendance

The meetings are always called during the work week and this is the third purpose, Doria said, of making certain that as many workers as possible attend.

"It's not easy to get a worker out of his home of a Sunday to attend a union meeting," he said.

A fourth advantage, according to Doria, is the fact that it puts the company completely on the defensive.

"The meetings are called without warning," he explained, "and take the company by surprise. They find it difficult to make commitments or plan production."

Doria added:

"This can't be said for the strike. After the initial surprise of the walkout the company knows just what it has to do and plans accordingly. If the strike is a weak one the company may try to break it with a back-to-work movement. If it's a strong one they close shop. The important thing is, they know just where they are at. Management can't plan for this new sort of thing.

[fol. 245]

May Lead to Lockout

"Then if, as a last resort management decides to close shop and force the workers out it can properly be called a lockout and raises two questions—one, does the company have to pay unemployment compensation and two, can the lockout properly be construed as an unfair labor practices act in violation of the law."

Doria said the union's new strike weapon is predicated on that section of the national labor relations act which states that "every group of employes is entitled to engage in activities for its mutual aid and protection."

"That's what this activity is for—our mutual aid and protection," Doria explained. "The company probably considers it 'economic pressure' but we call it 'self-defense.'"

One member of the union said Saturday that sometimes his first word of a stoppage came from a union steward walking by and saying, "Go on home, boys; there's going to be a meeting." However, Doria denied that the workers were ever told to go home.

"That's the whole point of it," he explained. "We planned the meetings this way in order to get the biggest possible attendance. We have always called them during the day shift because most of the workers are working that shift."

[fol. 246] Meet in Three Halls

Doria said that the union delegated a number of men to check the workers as they leave the plants and to check them in again at Jefferson hall, where the meetings are held in three halls, connected by loudspeakers. He estimated that about 1,200 attended each meeting. That is about the number of workers on the day shift.

"Of course, a few will slip away—that can be expected," he said, "but I doubt that it would include more than a dozen or two dozen at the most."

Doria said he believes the new method is original with the AFL union and is being used for the first time. He admitted that it was based on the often used protested work stoppage but with considerable refinements and streamlining.

One of the chief issues in the dispute at the Briggs-Stratton plants, which employ about 1,800 production workers, is the demand for an all-union shop.

EXHIBIT 7 (Notice dated March 15, 1946 by Briggs-Stratton that until further notice no Saturday work is scheduled during weeks in which work stoppages occur) (Not printed).

EXHIBIT 9 (Constitution of the International Union, U. A. W. A.) (Not printed).

EXHIBIT 10 (By-Laws of Local Union 232) (Not printed).

[fols. 247-248] EXHIBIT 11 (Minutes of Special Meeting of Local 232 held November 3, 1945) (Not printed).

EXHIBIT 12 (Minutes of Special Meeting of Local 232 held February 15, 1946) (Not printed).

EXHIBIT 13 (Tabulations of membership vote on motion authorizing adoption and continuance of special meetings at any time) (Not printed).

[fols. 249-250] IN SUPREME COURT OF WISCONSIN

APPENDIX

in

INTERNATIONAL UNION, U. A. W. A., A. F. L., LOCAL 232, et al.

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al.

[fol. 251] IN CIRCUIT COURT OF MILWAUKEE COUNTY

PETITION FOR REVIEW (Omitting formal parts)

The Petitioners above named, by Padway & Goldberg, their attorneys, respectfully pray that the Honorable Circuit Court in and for Milwaukee County, Wisconsin, review the findings of fact, conclusions of law, decision and order made and entered by the Wisconsin Employment Relations Board, and reverse and set aside the same, in the proceeding before that Board entitled "Briggs & Stratton Corporation, a Corporation, Complainant, vs. International Union, U. A. W. A., A. F. L., Local 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents."

Case III, No. 1173 Cw-64, Decision No. 953, which findings of fact, conclusions of law, decision and order were made and filed by said Board on the 11th day of May, 1946. In support of their Petition, your petitioners respectfully show the court as follows:

[fol. 252] 1. Petitioner, International Union, U. A. W. A., A. F. of L., Local 232, is an unincorporated labor association affiliated with the American Federation of Labor, having its office and principal place of business in the City and County of Milwaukee, State of Wisconsin.

2. The individually named Petitioners are officers and members of Petitioner union.

3. The Respondent, Wisconsin Employment Relations Board, and the individual members thereof, constitute an

administrative body existing under and by virtue of Chapter 111, Wisconsin Statutes, 1945, having its principal office in the City of Madison, Dane County, Wisconsin.

4. The respondent, Briggs & Stratton Corporation, is a Delaware corporation authorized to engage in business in the State of Wisconsin, having its principal place of business in Wisconsin in the City and County of Milwaukee.

5. The respondent corporation is engaged in the general manufacturing business, operating two manufacturing plants in the City and County of Milwaukee, State of Wisconsin, at which plants there are employed approximately 2,000 production and maintenance employees in the manufacture of various products.

6. The respondent corporation is engaged in business affecting Interstate Commerce and in Interstate Commerce, and any interruption in its business as a result of a labor dispute or controversy would affect Interstate Commerce [fol. 253] within the meaning of the provisions of the National Labor Relations Act, *29 U. S. Code, 151-166*, in that such corporation in its business uses substantial quantities of raw materials which are shipped to it from points outside the State and ships its manufactured product in substantial quantities to points outside the state.

7. In March of 1938, the National Labor Relations Board, pursuant to the terms and provisions of the National Labor Relations Act, assumed jurisdiction over a controversy respecting the representation of the employees of respondent corporation for the purposes of collective bargaining, and certified that the petitioning union was the duly designated collective bargaining representative for all hourly paid employees of the respondent corporation; that such determination has not been set aside, reversed or modified by any appropriate agency, nor has it been challenged by the respondent corporation herein.

8. The findings of fact, conclusions of law, order and decision which petitioners seek to review and set aside in these proceedings were made after hearing on a complaint filed with the Wisconsin Employment Relations Board by the respondent corporation, in which it was alleged that petitioners had engaged in certain unfair labor practices under the terms and provisions of Section 111.06 (2) of the

Wisconsin Statutes, in that petitioners had directed a [fol. 254] number of work stoppages between November 6, 1945 and the 22nd day of March, 1946, in violation of certain specified provisions of the afore cited statute; that the order of the Board directs the petitioners to cease and desist from

> "(a) Engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike.
>
> "(b) Coercing or intimidating employees by threats of violence or other punishment to engage in any activities for the purpose of interfering with production or that will interfere with the legal rights of the employees."

and to post notices that they will so cease and desist, and notify the Wisconsin Employment Relations Board what steps they have taken to comply with such order.

9. That such order, in the light of the findings of fact, conclusions of law, and decision of the Board, as well as in the light of the entire record before the Board, results in denying to petitioners rights afforded them by Federal and State Law and penalizes them for having exercised rights [fol. 255] assured to them by Federal and State Law, among which rights so referred to are the rights to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

10. That such order is null and void and of no effect whatsoever for the following reasons:

(a) It is contrary to the provisions of Article I, Section 8, Article VI and the Thirteenth and Fourteenth Amendments to the Constitution of the United States, in that it limits rights of the respondents under Federal law, statute and constitution to peaceably assemble, freely express themselves, to go out on strike, and not to be deprived of life, liberty, or property, without due process of law, and imposes upon them involuntary servitude;

(b) That it is in excess of the statutory authority and jurisdiction of the Wisconsin Employment Relations Board;

(c) That it is unsupported by substantial evidence in view of the entire record as submitted;

(d) That it is arbitrary and capricious;

(e) That it is not responsive to any provision of Chapter 111 of the Statutes;

[fol. 256] (f) That Chapter 111 of the Statutes has been misconstrued and misapplied to the facts in the instant case;

(g) That if any provision of the Wisconsin Statutes is in support of such order, then the Statute, as so construed, and the order, are null and void and of no effect whatsoever because in conflict with the Act of Congress known as the National Labor Relations Act, *29 U. S. Code, 151-166*, and in violation of Article I, Section 8, and Article VI of the Constitution of the United States, and the Thirteenth and Fourteenth Amendments thereto.

11. That the work stoppages directed by your petitioners were so directed as a result of the wilful, deliberate and inexcusable failure of the respondent corporation to comply with the terms and conditions of a Directive Order of the National War Labor Board, and because of the failure of the respondent corporation to engage in good-faith collective bargaining, and in furtherance of the efforts of your petitioners to secure compliance with a Directive Order of the National War Labor Board, and to enter into a collective bargaining agreement with the respondent corporation; that such stoppages were and have been authorized by virtually a 100% secret vote of all of the production employees of the respondent corporation and were directed [fol. 257] by your petitioners at the instance and request of such production workers. That such stoppages, whether denominated strikes or otherwise, were to aid in collective bargaining, and were for the purpose of affording mutual aid and protection to the production employees of the respondent corporation, as is their right and privilege under the Laws of the State of Wisconsin, and the Laws and Constitution of the United States of America.

12. That by virtue of the foregoing, petitioners are aggrieved and directly affected by the order and decision afore referred to.

Wherefore, Petitioners pray that the order of the Wisconsin Employment Relations Board be reversed, set aside, and held for naught.

Verification (Not printed).

Admissions of Service (Not printed).

IN CIRCUIT COURT OF MILWAUKEE COUNTY

NOTICE OF APPEARANCE OF WISCONSIN EMPLOYMENT RELATIONS BOARD (Omitting formal parts)

Please take notice that the respondent, Wisconsin Employment Relations Board, appears in the above entitled matter by its attorneys, John E. Martin, Attorney General, Stewart G. Honeck, Deputy Attorney General and Beatrice Lampert, Assistant Attorney General, and that a copy of all [fol. 258] subsequent pleadings, documents, notices or other papers subsequent to the summons and petition for review are to be served on such attorneys at their offices in the State Capitol, Madison, Wisconsin.

Take further notice that the position of said respondent is as follows:

That the findings of fact, conclusions of law, order and decision which the petitioners seek to review and set aside are not void or unlawful for any of the reasons set forth in the petition for review or for any other reason and alleges that the order complained of is a valid and lawful order.

Wherefore this respondent prays that the petition for review herein be dismissed.

Dated at Madison, this 8th day of June, 1946.

In Circuit Court of Milwaukee County

Notice of Appearance and Statement of Position of Briggs & Stratton Corporation (Omitting formal parts)

Please take notice that the above named respondent, Briggs & Stratton Corporation, appears in the above entitled matter by its attorneys, Wood, Warner, Tyrrell & Bruce and that a copy of all subsequent pleadings, documents, notices or other papers subsequent to the summons and petition for review are to be served on such attorneys [fol. 259] at their office, Room 404 Security Building, 213 West Wisconsin Avenue, Milwaukee 3, Wisconsin.

Take notice further that the position of said respondent, Briggs & Stratton Corporation is as follows:

1. The findings of fact, conclusions of law, order and decision of the Wisconsin Employment Relations Board referred to in the petition for review herein do not result in denying to the petitioners any rights afforded them by the Federal or State laws and does not penalize them in any way whatsoever nor prevent them from exercising any legal rights assured them by any Federal or State law.

2. The findings of fact, conclusions of law and order and decision of the said State Board are valid and are not void for any reason set forth in the petition for review or for any other reason whatsoever.

3. This respondent specifically denies all of the allegations contained in paragraph No. 11 of the petition for review.

4. The findings of fact of the Board are supported by the evidence and the conclusions of law, order and decision are valid and the petition for review should be dismissed.

Wherefore this respondent prays that the petition for review herein be dismissed.

Dated at Milwaukee, Wisconsin, this 15 day of June, 1946.

[fol. 260] Admission of service of notice of appearance (Not printed).

Admission of service of notice of appearance (Not printed).

IN CIRCUIT COURT OF MILWAUKEE COUNTY

NOTICE OF APPEAL OF BRIGGS & STRATTON CORPORATION
(Omitting formal parts)

Please take notice that Briggs & Stratton Corporation, one of the above named respondents, hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the judgment entered in the above entitled matter in the Circuit Court for Milwaukee County, Wisconsin, on the 30th day of October, 1946, in favor of the petitioners and against the respondents, which modifies the order of the Wisconsin Employment Relations Board of May 11, 1946, described in the said judgment, by striking paragraph 1(a) of the said order, appearing on Page 3 of said order.

Undertaking (Not printed).

Proof of service (Not printed).

Admission of service of notice of appeal. (Not printed).

IN CIRCUIT COURT OF MILWAUKEE COUNTY

NOTICE OF APPEAL OF WISCONSIN EMPLOYMENT RELATIONS BOARD (Omitting formal parts)

[fols. 261-272] Please take notice that the Wisconsin Employment Relations Board hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the judgment entered in the above entitled matter in the Circuit Court for Milwaukee County on the 30th day of October, 1946, in favor of the petitioners and against the respondents, which modifies the order of the Wisconsin Employment Relations Board therein described, entered May 11, 1946, by striking therefrom paragraph 1 (a) of the cease and desist order appearing on page 3 thereof.

Admissions of service of notice of appeal by Briggs & Stratton Corporation (Not printed).

Clerk's certificate (Not printed).

FOR DECISION, JUDGMENT, PROCEEDINGS BEFORE WISCONSIN EMPLOYMENT RELATIONS BOARD, AND ORDER OF BOARD, SEE APPENDIX IN WISCONSIN EMPLOYMENT RELATIONS BOARD V. INTERNATIONAL UNION, LOCAL 232, ET AL.

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[fols. 273-274] Pleas before the Supreme Court of the State of Wisconsin at a term thereof begun and held at the Capital in Madison, the seat of government of said State on the Second Tuesday, to-wit: the Thirteenth day of August, A. D. 1946.

Present: Hon. Marvin B. Rosenberry, Chief Justice; Hon. Chester A. Fowler, Hon. Oscar M. Fritz, Hon. Edward T. Fairchild, Hon. John D. Wickhem, Hon. Elmer E. Barlow, Hon. James Ward Rector, Justices.

Arthur A. McLeod, Clerk.

Be it remembered that heretofore, to-wit: on the twenty-third day of November in the year of our Lord One Thousand Nine Hundred and Forty-six came into the office of the Clerk of the Supreme Court of the State of Wisconsin, the Wisconsin Employment Relations Board, L. E. Gooding, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board, and Briggs & Stratton Corporation, a corporation, by their attorneys and filed in said Court their certain Notice of Appeal, according to the statute in such case made and provided, and also the Return to such appeal, of the Clerk of the Circuit Court of Milwaukee County, in said State, in words and figures following, that is to say:

[fol. 275] [Stamp:] Filed Nov. 20, 1946. Leonard A. Grass, Clerk

In Circuit Court, State of Wisconsin, Milwaukee County

Case No. 202-583

International Union, U. A. W. A., A. F. of L., Local 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John M. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Petitioners,

v.

Wisconsin Employment Relations Board; L. E. Gooding, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board, and Briggs & Stratton Corporation, a Corporation, Respondents

Notice of Appeal

To: Leonard A. Grass, Clerk of Circuit Court, Milwaukee County, Milwaukee, Wisconsin; Padway & Goldberg, Attorneys, 511 Warner Theatre Building, Milwaukee 3, Wisconsin; Wood, Warner, Tyrrell & Bruce, Attorneys, 213 W. Wisconsin Avenue, Milwaukee, Wisconsin.

Please take notice, that the Wisconsin Employment Relations Board hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the judgment entered in the above entitled matter in the Circuit Court for Milwaukee County on the 30th day of October, 1946, in favor of the petitioners and against the respondents, which modifies the order of the Wisconsin Employment Relations Board therein described, entered May 11, 1946, by striking [fol. 276] therefrom paragraph 1 (a) of the cease and desist order appearing on page 3 thereof.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board.

Proof of Service on Padway & Goldberg, filed.

Service admitted November 7th, 1946, by Wood, Warner, Tyrrell & Bruce.

Filed Nov. 23, 1946. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

[fol. 277] [Stamp:] Filed Nov. 12, 1946. Leonard A. Grass, Clerk.

[Stamp:] Filed Nov. 23, 1946. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

IN CIRCUIT COURT, STATE OF WISCONSIN, MILWAUKEE COUNTY

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Petitioners,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD; L. E. GOODING, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board; and Briggs & Stratton Corporation, a Corporation, Respondents

NOTICE OF APPEAL

To Leonard A. Grass, Clerk of Circuit Court, Milwaukee County, Milwaukee, Wisconsin; Padway & Goldberg, Attorneys, 511 Warner Theater Building, Milwaukee 3, Wisconsin; John E. Martin, Attorney General of Wisconsin as Attorney for Respondents, Wisconsin Employment Relations Board and the Members Thereof.

Please take notice that Briggs & Stratton Corporation, one of the above named respondents, hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the judgment entered in the above entitled matter in the Circuit Court for Milwaukee County, Wisconsin, on the 30th day of October, 1946, in favor of the petitioners and against the respondents, which modifies the order of the Wisconsin Employment Relations Board of May 11, 1946, [fol. 278] described in the said judgment, by striking paragraph 1 (a) of the said order, appearing on Page 3 of said order.

Wood, Warner, Tyrrell & Bruce, Attorneys for Briggs & Stratton Corp.

(Appeal bond for $250 attached.)

Service admitted November 12th, 1946, by Padway & Goldberg.

Service admitted November 12th, 1946, by Beatrice Lampert, Assistant Attorney General.

[fol. 279] [Stamp:] Filed Nov. 13, 1946 Leonard A. Grass, Clerk.

[Stamp:] Filed Nov. 23, 1946. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

In Circuit Court, State of Wisconsin, Milwaukee County

Wisconsin Employment Relations Board, Petitioner,

v.

International Union, U. A. W. A., A. F. of L. Local 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents

Notice of Appeal, Case No. 202-873

To Leonard A. Grass, Clerk of Circuit Court, Milwaukee County, Milwaukee, Wisconsin; Padway & Goldberg, Attorneys, 511 Warner Theatre Building, Milwaukee 3, Wisconsin; Wood, Warner, Tyrrell & Bruce, Attorneys, 213 W. Wisconsin Avenue, Milwaukee, Wisconsin.

Please take notice that the Wisconsin employment relations Board hereby appeals to the Supreme Court of the State of Wisconsin from that portion of the judgment entered in the above entitled matter in the Circuit Court for Milwaukee County on the 30th day of October, 1946, in favor of the respondents and against the petitioner, which modifies the order of the Wisconsin Employment Relations [fol. 280] Board therein described, entered May 11, 1946, by striking therefrom paragraph 1 (a) of the cease and desist order appearing on page 3 thereof.

John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General, Attorneys for Wisconsin Employment Relations Board.

Proof of service on Padway & Goldberg, filed.

Service admitted November 7th, 1946, by Wood, Warner, Tyrrell & Bruce.

[fol. 281] And afterwards to-wit on the 16th day of January, A. D. 1947, the following Notice of Review was filed in words and figures following, that is to say:

[fol. 282] [Stamp] Filed Jan. 16, 1947. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

In Supreme Court, State of Wisconsin

Case No. —

Case No. 202-873

Wisconsin Employment Relations Board, Petitioner,

vs.

International Union, U. A. W. A., A. F. of L., Local 232, et al., Respondents

Case No. 202-583

International Union, U. A. W. A., A. F. of L., Local 232, et al., Petitioners,

vs.

Wisconsin Employment Relations Board, et al., Respondents

Notice of Request for Review and Reversal

To John E. Martin, Attorney General; Stewart G. Honeck, Deputy Attorney General; Beatrice Lampert, Assistant Attorney General; Attorneys for Wisconsin Employment Relations Board. Wood, Warner, Tyrrell & Bruce, Attorneys for Briggs & Stratton Corporation.

Please take notice that the Respondents in Circuit Court Case No. 202 873 who are also the Petitioners in Circuit Court Case No. 202-583 will and hereby do in connection with the appeals taken by the Petitioner in Case No. 202 873, and by the Respondents in Case No. 202 583 request the Supreme Court of the State of Wisconsin to review and reverse paragraphs 1 and 2 (a), (b), and (c) of the judgment from which appeal has been taken by the Petitioner in

Circuit Court Case No. 202 873, and by the Respondents in Circuit Court Case No. 202 583.

Dated January 9, 1947.

Padway, Goldberg & Previant, Attorneys for Respondents, in Case No. 202-873 and Attorneys for Petitioners, in Case No. 202 583.

Service admitted January 11, 1947, by Beatrice Lampert, Asst. Atty. Gen.

Service admitted January 11, 1947, by Wood, Warner, Tyrrell & Bruce.

[fol. 283] And afterwards to-wit on the 8th day of April, A. D. 1947, the same being the 45th day of said term, the following proceedings were had in said causes in this Court:

MILWAUKEE CIRCUIT COURT

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, I. E. GOODING, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board, and Briggs & Stratton Corporation, a corporation, Appellants

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents

And now at this day came the parties herein, by their attorneys, and the argument of these causes having been commenced by Beatrice Lampert, Assistant Attorney General, for the said appellant Wisconsin Employment Relations Board, by Jackson M. Bruce, Esq., for the said ap-

pellant Briggs & Stratton Corporation, and by David Previant, Esq., for the said respondents, and there not being now sufficient time to complete the same, it is hereby continued for further argument.

[fol. 284] And afterwards to-wit on the 9th day of April, A. D. 1947, the same being the 46th day of said term, the following proceedings were had in said causes in this Court:

MILWAUKEE CIRCUIT COURT

INTERNATIONAL UNION, U. A. W. A., A. F. of L., LOCAL 232, et al., Respondents,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD et al., Appellants

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. of L., LOCAL 232, et al., Respondents,

And now at this day came the parties herein, by their attorneys, and the argument of these causes having been resumed and completed, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fol. 285] And afterwards to-wit on the 10th day of June, A. D. 1947, the same being the 63rd day of said term, the judgment of this Court was rendered in words and figures following, that is to say:

MILWAUKEE CIRCUIT COURT:

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board, and Briggs & Stratton Corporation, a Corporation, Appellants

Opinion by Justice Fowler

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, reversed.

And that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter judgment in accordance with the opinion.

Chief Justice Rosenberry, Justice Wickhem and Justice Rector dissent.

[fol. 286]. And afterwards to-wit on the 10th day of June, A. D. 1947, the same being the 63rd day of said term, the judgment of this Court was rendered in words and figures following, that is to say:

MILWAUKEE CIRCUIT COURT

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John H. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents

Opinion by Justice Fowler

This cause came on to be heard on appeal from the judgment of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Milwaukee County, in this cause, be, and the same is hereby, reversed.

And that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter judgment in accordance with the opinion.

Chief Justice Rosenberry, Justice Wickhem and Justice Rector dissent.

[fol. 287] Thereupon the opinion of the Court by Justice Fowler was filed in words and figures following, that is to say:

[fol. 288] [Stamp:] Filed June 10, 1947. Arthur A. McLeod, Clerk of Supreme Court, Madison, Wis.

No. 146

In Supreme Court, State of Wisconsin, August Term, 1946

International Union, U. A. W. A., A. F. of L., Local 232, et al., Respondents,

v.

Wisconsin Employment Relations Board, et al., Appellants

No. 147

Wisconsin Employment Relations Board, et al., Appellants,

v.

International Union, U. A. W. A., A. F. of L., Local 232, et al., Respondents

Appeals from Judgments of the Circuit Court of Milwaukee County: John C. Kleczka, Circuit Judge. Reversed

Action by International Union U. A. W. A. A. F. of L., Local No. 232 and others, against the Wisconsin Employment Relations Board and another, to review a cease and desist order of said Board.

Action by the Wisconsin Employment Relations Board against the International Union, U. A. W. A. A. F. of L., Local 232 and others, for enforcement of the order entered [fol. 289] in the first action.

Judgments in both actions were entered October 30, 1946. The Board and Briggs & Stratton Corporation appeal in the action brought by the union and the individual defendants. From the judgment in the action brought by the Board the Board appeals.

The evidentiary facts are not in dispute. The Briggs & Stratton Corporation was engaged in manufacturing and operating two plants. A contract between the union and the company had expired. The union was the representa-

tive of the employees for the purpose of collective bargaining. Collective bargaining was in process to fix the terms of a new contract. During such bargaining both plants were in operation. While so in operation the employees of the company at the instance of the union and its officers had by concerted action while at work stopped work during their scheduled working hours and remained away until their next scheduled hour for commencement of work. The work was conducted by two shifts. The day shift quit work during their working hours and stayed away until the following morning and then resumed work. The night shift on these occasions when the day shift quit work failed to appear for work during their scheduled hour for work the night of that day and returned for and resumed work at their scheduled hour for commencing work on the next night. The total number of these instances was twenty-seven. In each instance the employees of the shift left in an orderly manner and went directly to attend a union meeting off the premises previously ordered by the union. These meetings were called by certain of the defendants as officers or committees of the union at irregular times. [fol. 290] No advance notice of the meetings was given to either the company or the employees because it was considered that without any notice the stoppages would most lessen production and effect injury on the company. The times were fixed without any other reason or purpose. The employees were told to go forthwith and went as told. The action of the employees was a concerted effort to, and did, interfere with production and was taken as economic pressure to compel the company to comply with the union's demands respecting the terms of the contract being negotiated. It was a concerted action taken for the purpose of interfering with production and it so operated. No secret ballot was taken by a majority of the employees of the collective bargaining unit involved to call a strike precedent to any one of the walkouts, or precedent to the succession of walkouts, although the employee members of the union present at a union meeting did vote, but not by secret ballot, to walk out as might be directed by a committee of the union. No demand was made upon the company that any or a succession of walkouts would be engaged in unless the company conceded to the terms of the new contract as proposed by the union.

The Board upon the evidence found the facts essentially as above stated, and specifically further found—

"That all of such work stoppages were engaged in for the purpose of interfering with the production of the complainant and by such interference to induce and compel the complainant to accede to the demands of the union to be included in the collective bargaining agreement being negotiated between the parties.

"That the respondent union and the individual respondents have publicly stated that it is their intent and purpose to continue to engage in work stoppages similar to the [fol. 291] stoppages engaged in on November 6, 1945, and twenty-six times since then, up to and including the 22d day of March, 1946, for the purpose of inducing and coercing the complainant into compliance with their demands; and have threatened employes that failure to engage in such work stoppages and to attend the union meetings following such stoppage when directed by the respondent union and its officers, will result in punishment to employes of the complainant.

"That several employes of the complainant who failed and refused to take part in such work stoppages had their locker boxes damaged, clothing cut, ripped and otherwise damaged, tools and other property concealed or injured, and were subjected to assaults and threats of violence. That such acts were committed in the main on the property of the complainant company by persons unidentified.

"That the employes within the collective bargaining unit represented by the respondent union and employed by the complainant, never conducted a vote of any kind at which the union was directed to call a strike and that no strike has been called by the respondent union nor by the employees of the Briggs & Stratton Corporation against the company at any time."

The evidence upon which the last two findings are based is not above stated but it supports each conclusion of fact therein stated.

Upon the facts found the Board concluded, as conclusion of law, that the union and the individual defendants "are guilty of unfair labor practices by (a) engaging in concerted effort to interfere with production in a manner other than by leaving the premises in an orderly manner for the purpose of going on strike"; and (b) "coercing and intimi-

dating employees by threatening punishment if they failed to engage in such unlawful efforts to interfere with production."

[fol. 292] FOWLER, J.:

The two cases above entitled were argued and submitted together, one brought by the Wisconsin Employment Relations Board against a local union and their officers to enforce an order of the Board made upon hearing of a complaint by the Briggs & Stratton Corporation charging the union and their officers with committing an "unfair labor practice"; the other brought by the union and individual defendants against the Wisconsin Employment Relations Board and the corporation to review the order of the Board. Hereinafter the interested parties will be referred to in this opinion as "the union," "the board," "the company," the individual defendants as "the defendants" and the "employees."

Sec. 111.07 (4) Stats. provides that the "final orders" of the Board may "require the person complained of to cease and desist from the unfair labor practice found to have been committed."

The final order of the Board instantly involved required the defendants to cease and desist from:

"(a) Engaging in any concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours; or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike.

"(b) Coercing or intimidating employes by threats of violence or other punishment to engage in any activities for the purpose of interfering with production or that will interfere with the legal rights of the employes."

It is to be noted that the last clause of (a) of the Board's order forbids concerted effort not only to refrain from the particular things enjoined by the first sentence of (a) but enjoins any concerted effort to interfere with production except to leave the premises for the purpose of going on [fol. 293] strike, and this covers doing any one of the things that by the act constitutes an unfair labor practice.

That statute so far as applicable and material to the instant case may be stated as follows:

"Sec. 111.06 (2) It shall be an unfair labor practice for an employe individually or in concert with others:

"(a) To coerce or intimidate an employe in the enjoyment of his legal rights; . . . or to injure the . . . property of such employe . . .

"(e) To cooperate in engaging in (or) promoting . . . any . . . overt act concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike." . . .

"(h) . . . to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike."

It appears from the findings of fact of the Board set out in the statement preceding the opinion that the defendants committed the unfair labor practice proscribed by above paragraphs (a), (e) and (h).

We will first discuss the unfair labor practice committed under (e). It is to be noted that par. (e) involves cooperation in engaging in overt acts concomitant of a strike. Walking out and refraining from work, and not appearing for work for the purpose of exerting economic pressure are plainly concomitants of a strike, and so doing is an overt act. Cooperation in so doing by plainest implication is prohibited unless the majority of the employes of the collective bargaining unit by secret ballot have voted to go on strike. There was here no such vote to go on strike. The only vote taken was voiced on the hypothesis and understanding that the act or acts involved was not or were not strikes, and the vote was not by secret ballot. The employes are manifestly guilty of an unfair labor practice [fol. 294] under (e). All of the defendants are guilty of an unfair labor practice and are also so whether they walked out or refrained from work or not under sec. 111.06 (3) because they "caused to be done" those things. Sec. 111.06 (3) reads:

"Sec. 111.06 (3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or

to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section."

Taking up the commission of an unfair labor practice under par. (h), the validity of par. (a) of the order made by the Board depends on the meaning of the word "strike" as used therein, and that meaning turns on the meaning of the word as used in the statutes defining unfair labor practices. The word is used in pars. (e) and (h) of sec. 111.06 (2). The respondents claim that leaving the premises as the employes did with intent to resume work at the commencement of their next shift constituted a strike under par. (h) and that consequently the walkouts did not constitute an unfair labor practice, although they and the members of the union unquestionably understood and claimed when the walkouts occurred that they were not strikes. Throughout the controversy between the employer and its employes, the employes and their leaders contended that the activity in which they were engaged did not constitute a strike. It was described by the leaders as a labor weapon designated to avoid a strike and the hardship which a strike imposes on the employes; they claimed it was a better weapon than a strike. The appellants claim that such conduct did not constitute a strike and consequently did constitute an unfair labor practice under par. (h).

[fol. 295] It is fundamental that in construing a statute the words therein are to be given the meaning they commonly were understood to have at the time the statute was passed. 59 Corpus Juris, 1137, sec. 673. The meaning of the word "strike" in par. (h) must be construed according to that rule. Ch. 111 Stats. was enacted by Ch. 57, Laws of 1939. Before that time this court had defined the meaning of the word "strike' in a statute relating to labor disputes in *Oeflein Inc. v. State*, 177 Wis. 394, 188 N. W. 633. In that case a statute, sec. 1729 p-1, Stats. 1919, sec. 103.43 Stats. 1945, prohibited an employer from advertising for help when in fact a strike was in progress without stating in the advertisement the existence of the strike. The defendant was prosecuted for so advertising. The court said in the opinion, p. 399:

"The legislature did not see fit to define the term 'strike', but on the contrary used the term in the sense that it is

ordinarily used in connection with labor troubles and as defined by standard authorities upon the subject."

The court at p. 399 quoted Webster's New International Dictionary in defining the word "strike" as "An act of quitting when done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer" and referred generally to "numerous other definitions of the term 'strike' (that) . . . appear in law dictionaries and decisions, all of which . . . substantially include the elements contained in the definition . . ." quoted from Webster.

In 2 Restatement, Law of Torts, sec. 797, it is stated:

". . . it is not a strike if the employees temporarily stop work without making a demand upon the employer or [fol. 296] using the stoppage as a means of exacting a concession from him, even if the stoppage is against his will."

This idea is embodied in the *Oeflein Case*, supra, where it is said that to constitute a strike, p. 399:

". . . it first becomes incumbent upon the members or representatives of such unions to make a demand upon the employer in order to lay the basis for a refusal. Such view is in harmony with the fundamental thought underlying the definition of a strike under the common acceptation of the term, and it logically follows that it is contemplated that a strike exists after the demands of the employees are made and refused, as the result of which the employees are withdrawn from the employment."

The phrase above "withdrawn from employment," implies something more than the temporary quitting with intent to resume commencement of work on the next shift. It implies a continuous withdrawal until the object of the strike is obtained or the strike abandoned.

As bearing upon the continuation of the stoppage of work being necessary to constitute a strike, sec. 103.43 (1a) is informative. It was in existence when Ch. 111 was enacted. It reads, so far as here material:

"A strike . . . shall be deemed to exist as long as . . . unemployment on the part of the workers affected continues; . . ."

This plainly implies that to constitute a strike there must be a continuance of unemployment. There was no unemployment here; certainly there was no continuance of unemployment.

From the above we think it clearly follows that the employees did not engage in the stoppages of work involved for the purpose of "going on strike" and that the concerted effort to interfere with production constituted an unfair labor practice under par. (b) of sec. 111.06 (2). The union and the individual defendants caused the walkouts and the refraining from work for the purpose of interfering with production above quoted and under sec. 111.06 (3) they [fol. 297] were all guilty of an unfair labor practice whether they in fact were among the employees who did those things or not.

We also think par. (b) of the order of the Board is valid because the union and the individual defendants were guilty of an unfair labor practice for coercing and intimidating employees contrary to par. (a) of sec. 111.06 (2) in the enjoyment of their legal rights. It was certainly a legal right of the employees to continue their work if they wanted to. The injury to property of such employees was undisputably proven even though their names were not determined by the Board. The prohibition of the cease and desist order operates on the individual members of the union as well as upon the union's officers, although the individual members are not named as defendants. The union is only an association of its members and whatever is forbidden to the union is forbidden to its members.

The order of the Board is criticised because it purports to ban employees from quitting work for the purpose of going to work elsewhere, or with intention of not resuming employment with the instant employer for whatever reason. The order has no such far-reaching effect either upon individuals or upon employees acting in concert. What (a) does, and all that it does, is to ban the individual defendants and the members of the union from "engaging in concerted effort" to interfere with production by doing the acts instantly involved. Par. (b) of the order does not use the word "concerted" before the word "activities," and only a few instances appeared in the evidence of employees doing the acts banned by the paragraph. But the defendants [fol. 298] manifestly have no right to do the things banned

by the paragraph and the order is not void merely because it forbids others from doing what the offending employees did. The same criticism was raised to the order involved in *Wisconsin Employment Relations Board* v. *Milk, Etc. Union*, 238 Wis. 379, 394, 299 N. W. 31, where it is disposed of by the court saying:

"Besides, if there were only isolated instances of such threats (against customers of employer) no harm results to the union from including the ban in the judgment, as confessedly the union has no right so to threaten."

When nobody is hurt, nobody has cause to cry.

We consider that the above is sufficient to warrant sustaining the validity of the order of the Board involved under the terms of the statutes purporting to ban unfair labor practices by employees.

The union contends that if the order is in accordance with the statutes the order is unconstitutional and void so far as it forbids the employees to quit work. The first claim in this respect is that it imposes involuntary servitude contrary to the XIIIth amendment to the Constitution of the United States. The constitutional point of involuntary servitude here argued was in issue in *Western Union Tel. Co. v. International Brotherhood Elec. Workers*, 2 Fed. (2d) 993. It is said in the opinion in that case, p. 994:

"As to clause 1 of the prayer for a temporary injunction it is said that it prevents employees from ceasing to work, and therefore imposes involuntary servitude upon them. The right to cease work is no more an absolute right than is any other right protected by the Constitution. Broadly speaking, of course, one has the right to work for whom he will, to cease work when he wishes, and to be answerable to no one unless he has been guilty of a breach of contract. But the cessation of work may be an affirmative step in an unlawful plan."

When it is such a step in a concerted plan to do an unlaw- [fol. 299] ful act it may be enjoined. The quitting and remaining from work in the instant cases was done pursuant to a conspiracy to carry out an unlawful plan. There are many cases to the point that a conspiracy to commit a criminal act may be enjoined. It is too late to contend to the contrary in this state in view of the decision of this court in *State ex rel. Durner v. Huegin*, 110 Wis. 189, 85 N. W. 1046,

and its affirmance in *Huegin (Aikens) v. Wisconsin*, 195 U. S. 194. As said in *Dorchy v. Kansas*, 272 U. S. 306, 71 L. Ed. 248, 47 S. Ct. 86:

"To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally . . . And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment confers the absolute right to strike. Compare Aikens (Huegin) v. Wisconsin, 195 Wis. 194, 204, 205."

The opinion from which the above quotation is taken was written by Mr. Justice Brandeis. The act involved in the case was criminal by statute of Kansas but criminality is not necessary to support injunctional relief. For two or more persons to conspire to do an act to the injury of another which one person acting alone might lawfully do constitutes in this state a legal wrong. *Judevine v. Benzies-Montanye Fuel & Whlse. Co.*, 222 Wis. 512, 269 N. W. 295. If a conspiracy to do a criminal act may be enjoined so may conspiracy to do an illegal act not criminal. All that is essential to support injunctional relief is unlawfulness. Unfair labor practices are unlawful by our statutes and the Board is given the power to forbid such practices. Sec. 111.07 (4). Its power to make cease and desist orders in cases wherein they are authorized by the statute is as soundly established [fol. 300] as the power of courts to grant injunctions against criminal conspiracies. While the act involved in the instant case did not involve strikes, certainly if a court or Board may prevent strikes by injunctional or cease and desist orders, it may issue such orders to prevent the concerted action to cease work here involved. The greater quitting of work involved in strikes includes the lesser quitting here involved.

The respondents also contend that the order involved is unconstitutional because it imposes "previous restraint" upon the right of freedom of speech and freedom of assembly, both protected by the same provision of the constitution that protects freedom of the press. This contention seems to be that as freedom of the press can not be restrained, neither can one's freedom of speech be restrained by preventing him from saying what he may want in the future to say to induce employees to join the union or to join in its activities, nor can freedom of assembly be re-